112-238

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~328.~~ 36

JONATHAN H. PUGH, Surviving Trustee, &c., APPELLANT,

vs.

THE FAIRMOUNT GOLD AND SILVER MINING COMPANY,
GILBERT B. REED, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF COLORADO.

FILED OCTOBER 4, 1881.

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1 Pleas in the Circuit Court of the United States for the District of Colorado, sitting at Denver.

Be it remembered, that heretofore, and on, to wit, the 2d day of November, A. D. 1877, came J. Q. A. King, Esq., an attorney and solicitor of record in said court, and filed in said court a transcript of proceedings theretofore had in the district court within and for the county of Clear Creek, State of Colorado, in a certain cause wherein Thomas Hare and Jonathan H. Pugh, trustees, were complainants, and Fairmount Gold and Silver Mining Company *et al.*, were defendants.

And the said transcript of proceedings is in words and figures as follows, to wit:

Transcript from District Court, Clear Creek County.

Territory of Colorado, County of Clear Creek. In the District Court for said County.

THOMAS HARE and JONATHAN H. PUGH, Trustees, &c.,
vs.
THE "FAIRMOUNT GOLD AND SILVER MINING COMPANY" *et al.*

To the Honorable Amhurst W. Stone, Judge of said Court, in Chancery sitting:

2 Your orators, Thomas Hare and Jonathan H. Pugh, citizens and residents of the city of Philadelphia, and State of Pennsylvania, would respectfully represent and show unto your honor that on the 22d day of August, A. D. 1870, one of the defendants, the "Fairmount Gold and Silver Mining Company," a corporation existing under and by virtue of the laws of the said State of Pennsylvania, became and was indebted to divers parties in the sum of seventeen thousand dollars, and being so *indebted*, on the same day, and in consideration thereof, executed and delivered by its proper officers to your orators, as trustees, a certain bond of that date for the penal sum of thirty-four thousand dollars, conditioned, however, that the same should be void, upon the payment of the said sum of seventeen thousand dollars with interest thereon, at the rate of six per cent. per annum in gold, from the date thereof. The said bond maturing at the expiration of one year from the date thereof, and the said interest payable half yearly, as by the said bond of the said company then provided, and a copy of the same hereunto attached, marked Exhibit "A," and prayed to be made a part of this bill, will more fully appear.

Your orators would further show unto your honor that the said "Fairmount Gold and Silver Mining Company," on the 22d day of August, A. D. 1870, to secure the payment of the principal
3 sum and interest mentioned in the said bond made and executed under the hands and seals of its proper officers and its corporate seal, and delivered to your orators, as trustees as aforesaid, a mortgage conditioned for the payment of the said sum

mentioned in the said bond as aforesaid, and the interest thereon according to the tenor and effect of the same, by which said mortgage the said "Fairmount Gold and Silver Mining Company" conveyed to your orators in fee the following-described property, to wit:

All that certain mill, mill site, steam engine, and machinery in said mill, and all the appurtenances thereunto belonging, and the following real estate, mines, or lodes, to wit: Fifteen hundred feet on the Fairmount lode, fifteen hundred feet on the Goodenough lode, eight hundred feet on the Thackera lode, eight hundred feet on the Hanson lode, eight hundred feet on the General Moorehead lode, and eight hundred feet on the Robert Steel lode, together with all the real estate and appurtenances thereunto, or in any wise appertaining or belonging, situate in, on, or adjacent to Hukill Gulch, Spanish Bar District, Clear Creek county, Colorado Territory; together with all and singular the buildings, ways, waters, water-courses, rights, liberties, privileges, improvements, hereditaments, and appurtenances whatsoever thereunto belonging, or
4 in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof.

Which said mortgage was duly acknowledged, and afterwards on the 30th day of August, A. D. 1870, at 9 o'clock p. m. of said day duly filed for record in the office of the recorder of said county of Clear Creek, in the Territory of Colorado, and the same was then and there duly recorded in Book No. 11, pages 17, 18, 19, and 20 of Mortgages, in said records of said county, as by the said mortgage and accompanying certificate of acknowledgments and recording are ready to be produced in court, and a copy of the same is hereto attached, marked Exhibit "B," and made a part of this bill, will more fully appear.

Your orators further represent and show unto your honor that the sum of seventeen thousand dollars, with interest from the date aforesaid of said bond, remains due and unpaid on said bond and mortgage, and that no proceedings at law have been had to recover the debt secured by said mortgage.

Your orators further show that the said "Fairmount Gold and Silver Mining Company" is now wholly insolvent and unable to pay or to redeem said promises, and that the said mortgaged premises is meagre and scant security for the said sum mentioned
5 in the said bond and mortgage and now due your orators, and that the value thereof is wholly insufficient to pay the amount so due, with the costs of this proceeding.

And your orators further show that John W. Thackera, Theodore H. Lowe, and Lorenzo M. Freas, of the county of Clear Creek, Territory of Colorado, and George W. Waters, of the city of Philadelphia, and State of Pennsylvania, and Gilbert B. Reed, of Arapahoe county, have, or claim to have, some interest in the said mortgaged premises, or some part thereof, as judgment creditors or otherwise, which interests, if any, have accrued subsequent to the lien of the said mortgage of your orators and subject thereto.

For as much, therefore, as your orators are wholly without adequate remedy in the premises, except in a court of equity, and to the end that said Fairmount Gold and Silver Mining Company, John W. Thackera, Theodore H. Lowe, Lorenzo M. Freas, and Geo. W. Waters, who are made parties defendants to this bill of complaint, may be required to make full and direct answers to the same, but not under oath, the answer under oath being expressly waived; that an account may be taken in this behalf by or under the direction of this honorable court; that the defendants, or some of them, may be decreed to pay to your orators whatever sum shall appear to be due
6 them as such trustees upon the taking of such account, together with their costs of this proceeding, by a short day to be named by the court; that in default of such payment the said premises may be sold, as the court shall direct, to satisfy the amount due your orators and the costs; that in case of such sale, and a failure to redeem therefrom pursuant to law, the defendants, and all persons claiming through or under them, or either of them, after the commencement of this suit may be forever barred and foreclosed of all right or equity of redemption of said mortgaged property, and that your orators may have such other and further and general relief in the premises as equity may require, and to your honor may seem just and proper.

And may it please your honor to grant the writ of summons in chancery directed to the sheriff of said county of Clear Creek, commanding him to summon the defendants above named to appear before this honorable court on the —— day of December, A. D. 1875, at the court-house, in Georgetown, for said county, then and there to answer this bill.

SAM. P. ROSE,
Sol'r for Complainants.

7 EXHIBIT "A."

"Know all men by these presents, that the Fairmount Gold and Silver Mining Company, a corporation created by the Legislature of Pennsylvania, (hereinafter called the obligors,) are held and firmly bound unto Thomas Hare and Jonathan H. Pugh, of the city of Philadelphia, (hereinafter called the obligees,) in the sum of thirty-four thousand dollars, lawful money of the United States of America, to be paid to the said obligees, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, the said corporation do bind and oblige themselves, and their successors, firmly by these presents. Sealed with their seal, dated the twenty-second day of August, in the year of our Lord one thousand eight hundred and seventy.

"The condition of this obligation is such, that if the above-bounden obligors, their successors, or any of them, shall and do well and truly pay, or cause to be paid, unto the above-named obligees, their certain attorney, executors, administrators, or assigns, the just sum of seventeen thousand dollars, lawful money aforesaid, at the expiration of one year from the date hereof, together with interest thereon at the rate of six per cent. per annum, payable half-yearly in gold, without any fraud or further delay, then the above obligation to be void, else to be and remain in full force and virtue.

Provided, however, and it is hereby expressly agreed, that, if
8 at any time default shall be made in the payment of interest
as aforesaid, for the space of thirty days after any payment
thereof shall fall due, then and in such case the whole principal
debt aforesaid shall, at the option of the said obligees, their executors,
administrators, or assigns, become due and payable immediately,
and payment of said principal debt, and all interest thereon,
may be enforced and recovered at once. Anything herein contained
to the contrary thereof notwithstanding, and it is hereby
declared and agreed that the said debt or principal sum of seventeen
thousand dollars is the same which by an indenture of mortgage
of even date herewith, between the above-named obligors and
obligees, to which adhesion stamps of the internal revenue of the
United States of the value or denomination of seventeen dollars
had been previously duly affixed, is secured upon a certain mill,
mill site, steam engine, and machinery in said mill, and all the
appurtenances thereunto belonging, and the following real estate,
mines, or lodes, to wit, fifteen hundred feet on the Fairmount lode,
fifteen hundred feet on the Goodenough lode, eight hundred feet
on the Thacera lode, eight hundred feet on the Hanson lode, eight
hundred feet on the General Moorhead lode, and eight hundred
feet on the Robert Steel lode, together with all the real estate
9 and appurtenances therento, or in any wise appertaining or be-
longing, situate in, on, and adjacent to Hukill Gulch, Spanish
Bar District, Clear Creek county, Colorado Territory.

"[CORPORATION SEAL.] CHAS. H. BROWN,
"*Pres't Fairmount Gold and Silver Mining Company.*
"T. J. CLINGER,
"*Sec'ty Fairmount Gold and Silver Mining Company.*

"Sealed and delivered in the presence of—the word 'corporation' above 9th line, 'successors' above 14th line, and 'in gold' above 19th line being first interlined; 'heirs,' 'executors,' and 'administrators' on 9th and 14th lines being first erased—

"W. N. ASHMAN.
"THOMAS J. ASHTON."

EXHIBIT "B."

[Seventeen dollars internal rev. stamps duly canceled, &c.]

"This indenture made the twenty-second day of August, in the year of our Lord one thousand eight hundred and seventy, (1870,) between the Fairmount Gold and Silver Mining Company, a corporation created by the Legislature of Pennsylvania, of the first part, *an* Thomas Hare *an* Jonathan H. Pugh, of the city of Philadelphia, of the other part.

10 "Whereas the said Fairmount Gold and Silver Mining Company, in and by their certain obligation or writing obligatory under their corporate hand and seal, duly executed, bearing even date herewith, stand bound unto the said Thomas Hare and Jonathan H. Pugh, in the sum of thirty-four thousand dollars lawful money of the United States of America, conditioned for the payment of the just sum of seventeen thousand dollars, lawful money aforesaid, at the expiration of one year from the date thereof, together with interest thereon at the rate of six per cent. per annnm, payable half yearly in gold, without any fraud or further delay.

"Provided, however, and it is thereby expressly agreed, that if at any time default shall be made in the interest as aforesaid for the space of thirty days after any payment thereof shall fall due, then, and in such case, the whole principal debt as aforesaid, shall at the option of the said Thomas Hair and Jonathan H. Pugh, their executors, administrators, or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recorded at once; anything therein contained to the contrary thereof notwithstanding, as in and by the said recited obligation, and the condition thereof, relation being thereunto
11 had, may more fully and at large appear.

"Now this indenture witnesseth, that the said 'Fairmount Gold and Silver Mining Company,' as well for and in consideration of the aforesaid debt or principal sum of seventeen thousand dollars, and for the better securing the payment of the same, with interest as aforesaid, unto the said Thomas Hair and Jonathan H. Pugh, their executors, administrators, and assigns in discharge of the said recited obligation, as for and in consideration of the further sum of one dollar, unto them in hand well and truly paid by the said Thomas Hair and Jonathan H. Pugh, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, and confirm unto the said Thomas Hair and Jonathan H. Pugh, their heirs and assigns, all that certain mill, mill site, steam engine, and machinery in said mill, and all the appurtenances thereunto belonging, and the following real estate, mines, or lodes, to wit: Fifteen hundred feet on the Fairmount lode, fifteen hundred feet on the Goodenough lode, eight hundred feet on the Thackra lode, eight hundred feet on the Hanson lode,
12 eight hundred feet on the General Moorhead, and eight hundred feet on the Robert Steel lode, together with all the real estate and appurtenances thereunto, or in anywise appertaining or belonging, situate in or adjacent to Hukill Gulch, Spanish Bar District, Clear Creek county, Colorado Territory, together with all and singular the buildings, ways, waters, water courses, rights, liberties, privileges, improvements, heredita-

ments, and appurtenances, whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof. To have and to hold the said mill, mill sites. lodes, and mines, machinery, heriditaments, and premises hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said Thomas Hair and Jonathan H. Pugh, their heirs and assigns forever.

"Provided, nevertheless, that if the said 'Fairmount Gold and Silver Mining Company,' their successors or assigns, do and shall well and truly pay or cause to be paid unto the said Thomas Hair and Jonathan H. Pugh, their executors, administrators, or assigns, the aforesaid debt or principal sum of seventeen thousand dollars, on the day and time hereinbefore mentioned and appointed,
13 for the payment of the same, together with interest, as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything for or in respect of any taxes, charges, or assessments whatsoever, that then and from thenceforth, as well this present indenture, and the estate hereby granted as the said recited obligation shall cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding; and provided, also, that it shall and may be lawful for the said Thomas Hair and Jonathan H. Pugh, their executors, administrators, and assigns, when and as soon as the principal debt or sum, hereby secured, shall become due and payable, as aforesaid, or in case default shall be made for the space of thirty days in the payment of interest on the said principal sum, after any payment thereof shall fall due, as aforesaid, to sue out forthwith a writ or writs of *scire facias* upon this indenture of mortgage, and to proceed thereon to judgment and execution for the recovery of the said principal debt, and all interest due thereon, without further stay, any law, usage, or custom to the contrary notwithstanding.

"In witness whereof, the said parties to these presents
14 have hereunto interchangeable set their hands and seals, dated the day and year first above written.

"[SEAL. CORPORATE SEAL.] CHAS. H. BROWN,
"*President of Fairmount Gold and Silver Mining Company.*
"T. J. CLINGER,
"*Secretary of Fairmount Gold and Silver Mining Company.*

"Sealed and delivered in the presence of us—the said indenture having first had affixed thereto revenue stamp of the United States, of the denomination or value of seventeen dollars, and the words 'heirs,' 'executors,' 'administrators,' on the 12th line of this page being first erased, and the words 'in gold' being first interlined between the 14th and 15th line of first page—

"WM. N. ASHMAN.
"THOMAS J. ASHTON.

15 "STATE OF PENNSYLVANIA,
"*City and County of Philadelphia.* }

"On the twenty-fifth day of August, anno Domini 1870, before me, a commissioner of deeds for the Territory of Colorado, personally appeared the above-named Charles Brown, president of the said corporation, and T. J. Clinger, secretary of the said corporation, and in due form of law acknowledged the above indenture of mortgage to be the act and deed of the said corporation, and desired the same might be recorded as such, the said Charles H. Brown, being duly sworn, deposes and says, that he was personally present at the execution of the above written indenture and saw the common seal of the said corporation duly affixed thereto, and that the said seal so affixed thereto is the common and corporate seal of the said 'Fairmount Gold and Silver Mining Company,' and that the above written indenture was duly sealed and delivered by and as and for the act and deed of the said corporation for the uses and purposes therein mentioned, and that the name of this deponent subscribed to the above indenture as president of said corporation, is of this deponent's own proper handwriting.

"Witness my hand and seal, the day and year aforesaid.

"[SEAL.] SAMUEL L. TAYLOR,
"*Commissioner for Colorado.*

16 "The above indenture being duly acknowledged and the above affidavit duly sworn to and subscribed before me, the words 'in gold' being first interlined between the 14th and 15th lines of first page, and 'heirs,' 'executors,' 'administrators,' first erased on 12th line of this page, and 'of the said corporation,' interlined between the 3d and 4th lines of this acknowledgment.

"Endorsed as follows: 'Mortgage. The Fairmount Gold and Silver Mining Company to Thomas Hair and Jonathan H. Pugh."

"TERRITORY OF COLORADO, } *ss:*
"*Clear Creek County,* }

"I hereby certify that the within instrument was filed in this office for record August 30th, 1870, at 9 o'clock p. m., and recorded, Book Number 11, pages 17, 18, 19 and 20 of Mortgages.

"WM. SPRUANCE, *Recorder.*

"Fees, $3.50."

17 Endorsed: 1478. Thomas Hare and Jonathan H. Pugh, trustees, etc., *vs.* Fairmount Gold and Silver Mining Company *et al.* O. B. For foreclosure. Filed Aug. 16, 1877, as of the 26th day of Nov. 1875, by agreement of parties. H. H. Atkins, clerk. Sam. P. Rose, solicitor.

Security for Costs. District or Probate Court.

TERRITORY OF COLORADO, } *ss.*
Clear Creek County. }

In the District Court.

THOMAS HARE and JONATHAN H. PUGH
versus
FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*

I do hereby enter myself security for costs in this case, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite parties or to any of the officers of this court, pursuant to the laws of Colorado Territory.

Dated this 16th day of November, A. D. 1875.

[SEAL.] SAM. P. ROSE.
"B"

Endorsed: 1478. The district court, December term,
18 A. D. 187—. Security for costs. Thomas Hare and Jonathan H. Pugh *vs.* Fairmount Gold and Silver Mining Company *et al.* Approved by me and filed in clerk's office district court, this 26th day of November, A. D. 1875. C. Withrow, clerk. H. H. Atkins.

TERRITORY OF COLORADO, } *ss.*
Clear Creek County. }

The people of the Territory of Colorado to sheriff of said county, Greeting:

We command you, that you summon the Fairmount Gold and Silver Mining Company, John W. Thackara, Theodore H. Lowe, Lorenzo M. Freas, and George M. Waters, if they shall be found in your county, personally to be and appear before the district court of said county, on the first day of next term thereof, to be holden at the court-house in Georgetown, in said county, on the 6th day of December, A. D. 1875, to answer unto Thomas Hare, Jonathan H. Pugh, in their certain bill of complaint for foreclosure and relief filed in said court on the chancery side thereof. And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

19 Witness Chase Withrow, clerk of said court, and the seal thereof, at Georgetown this 26th day of Nov., A. D. 1875.

[SEAL.] CHASE WITHROW, *Clerk.*
"C." By H. H. ATKINS, *Deputy.*

TERRITORY OF COLORADO, } *ss:*
Clear Creek County, }

Executed this writ this 26th day of November, 1875, by reading it and leaving a copy of the within writ with John W. Thackara, agent of the "Fairmount Gold and Silver Mining Company," the president, treasurer, or secretary, or other officers, not found in my county, and have further served this writ by reading it to Theo. H. Lowe and John W. Thackera, but Lorenzo M. Freas and George M. Waters not found in my county, this 6th day of December, 1875.

JNO. C. EASLEY, *Sheriff.*
By O. C. BENNETT, *Deputy.*

Endorsed: 1478. Chancery summons. In the matter of Thos. Hare *et al. vs.* Fairmount G. & S. M. Co. *et al.* Summons: Dec. term, 1875. Sheriff's fees: Service on 3, $4.50; deputy, $1.00; mileage, $6.40; $11.90. Filed in dist. court, this 6th day of Dec., A. D. 1875. C. Withrow, cl'k. By H. H. Atkins, deputy. R. S. Morrison, attorney.

20 TERRITORY OF COLORADO, }
Clear Creek County, } *ss:*

The people of the Territory of Colorado to the sheriff of Gilpin county, Greeting:

We command you, that you summon Lorenzo M. Freas, impleaded with the Fairmount Gold and Silver Mining Company, John W. Thackara, Theodore H. Lowe, and George M. Waters, if he shall be found in your county, personally to be and appear before the district court of said county, on the first day of the next term thereof, to be holden at the court-house in Georgetown, in said Clear Creek county, on the 6th day of December, A. D. 1875, to answer unto Thomas Hare and Jonathan H. Pugh, in their certain bill of complaint, foreclosure, and relief, filed in said court on the chancery side thereof. And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness Chase Withrow, of our said court, and the seal thereof, at Georgetown, this 26th day of Nov., A. D. 1875.

[SEAL.] CHASE WITHROW, *Clerk.*
"D." By H. H. ATKINS, *Deputy.*

21 Endorsed: 1478. Chancery summons. Gilpin county. In the matter of Chas. Hare *et al. vs.* Fairmount G. & S. M. Co. *et al.* Summons. Dec. term, 1875. Filed in dist. court this 6th day of Dec., A. D. 1875. C. Withrow, clerk. By H. H. Atkins, deputy. R. S. Morrison, attorney.

OF COLORADO COUNTY, *ss:*

I executed this writ this 3d day of December, by reading it copy of the same to within named defendants to Elonzo W. Freze.

W. J. BOFFINGTON,
Sheriff Gilpin County.

Miles necessary travel from court house to place of residence of within named defendants and return :

Cents per mile	$0 20
Return	75
Service	75
	$1 70

22 THOMAS HARE and JONATHAN H. PUGH,
Trustees, &c.,
vs.
THE FAIRMOUNT *Mount* GOLD AND SILVER MINING
COMPANY *et al.*
In Chancery.

Whereas the bill of complaint in this cause, filed on the 26th day of November, A. D. 1875, has been lost from the files, it is stipulated by the counsel for complainants and the defendants that the same be supplied by the copy this day presented in court, and by the clerk filed.

G. B. REED, *Def't.*
"E." SAM. P. ROSE, *Sol. for Comp'ts.*

Endorsed: 1478. Thos. Hare and Jonathan H. Pugh, trustees, &c., *vs.* Fairmount Gold and Silver Mining Company *et al.* Stipulation to supply lost bill, &c. Filed Aug. 16, 1877. H. H. Atkins, clerk.

23 THOMAS HARE and JONATHAN H. PUGH,
Trustees,
vs.
FAIRMOUNT GOLD AND SILVER MINING
COMPANY.
In Chancery.

It is stipulated in this cause that Gilbert B. Reed has succeeded to all the rights and interest that John W. Thackera had in and to the property mentioned and described in the bill of complaint filed herein, and that the said bill of complaint be dismissed as to the said Thackera, and that the said Gilbert B. Reed be, and he is made, a party defendant to the said bill of complaint, and as such defendant shall succeed to all the rights and interests and defenses of the said Thackara, which he, the said Thackara, had at the time of the filing of the said bill of complaint, and no further.

G. B. REED,
"F." SAM. P. ROSE,
Sol. for Compl'ts.

Endorsed: 1478. Thomas Hare and Jonathan H. Pugh, trustees, &c., *vs.* Fairmount Gold and Silver Mining Company *et al.* Stipulation dismissing as to Thackera, and making G. B. Reed party defendant. Filed Aug. 16, 1877. H. H. Atkins, clerk.

24 THOMAS HARE, JONATHAN H. PUGH, Trustees,
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*
} In Chancery.

In this cause it appearing to the court by a stipulation this day filed by the solicitor for complainants, and Gilbert B. Reed, in his own proper person, that the said Gilbert B. Reed has succeeded to all the rights, interests, and defenses of the defendant, John W. Thackara, it is therefore ordered by the court in accordance with said stipulation that the said Gilbert B. Reed be made a party defendant to said bill, and that he have the right to all the defenses of the said Thackara, which he, the said Thackara, had when the said bill of complaint was filed and no further, and that the complainant have leave to *to* amend his bill of complaint, so as to include the name of the said Reed, and the bill as to the said John W. Thackara be, and the same is, dismissed.

"G."

Endorsed: 1478. Thomas Hare and Jonathan H. Pugh, trustees, *vs.* Fairmount Gold and Silver Mining Company *et al.* Decree in stipulation. Filed Aug. 16 1877. H. H. Atkins, clerk.

25 THOMAS HARE and JONATHAN H. PUGH,
Trustees, &c.,
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*
} In Chancery.

It appearing to the court that the said defendants, the Fairmount Gold and Silver Mining Company, Theodore H. Lowe, and Lorenzo W. Freas were duly served with summons to appear and answer the bill of complaint of the said complainants herein filed at the December term of this court, A. D. 1875, and that they and each of them have failed to appear, answer, plead, or demur to the said bill of complaint, it is therefore ordered, adjudged and decreed that the same be taken for confessed as to them and set for hearing *ex parte.*

"H." WM. E. BECK, *Judge.*

Endorsed: 1478. Hare *et al. vs.* Fairmount G. & S. M. Co. *et al.* Order. Filed Aug. 16th, 1877. H. H. Atkins, clerk.

26 *Affidavit in Support of Petition for Removal.*

In the District Court, 1st Judicial District, for Clear Creek County, State of Colorado.

THOMAS HARE and JONATHAN H. PUGH, Trustees, &c., Pl't'ffs,
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY, GILBERT REED, and others, Def'ts.

Jonathan H. Pugh, the above named of pl'tiffs, of lawful age, being duly sworn, on his oath says: That the above-named plaintiffs, Thomas Hare and Jonathan H. Pugh, were at the time of the commencement of this action, ever since have been, and now are, citizens of the State of Pennsylvania; that defendants, Gilbert Reed and all the others with whom there is any controversy in this cause, are now, and ever since the commencement of this action have been, residents of the State of Colorado.

That the amount in dispute in this action exclusive of cost exceeds five hundred dollars, and affiant further says that he has reason to believe, and does believe, that from the local prejudices
and local influence plaintiffs will not be able to obtain justice
27 in said district court within and for said county of Clear
Creek. Wherefore, he prays that said cause may be removed
to the circuit court of the United States for the district of Colorado.

(S'g'd) J. H. PUGH.

"I."

Sworn to and subscribed before me, a commissioner for the State of Colorado, in Philadelphia, State of Pennsylvania, by the above-named Jonathan H. Pugh, this twenty-second day of August, A. D. 1877.

[SEAL.] (S'g'd) SAMUEL L. TAYLOR,
Commissioner for Colorado.

Know all men by these presents, that we, Thomas Hare and Jonathan H. Pugh, as principals, and ———, as sureties, are held and firmly bound unto Gilbert Reed, "Fairmount Gold and Silver Mining Co.," and others, defendants in said cause, in the sum of five hundred dollars, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, our executors, and administrators, jointly and severally, and firmly by these presents. Witness our hands and seals, this 22d day of August, A. D. 1877.

Now the condition of this obligation is such that whereas the
above bounden Thomas Hare and Jonathan H. Pugh, are
28 about to remove a certain cause in which they are plaintiffs,
and said obligees are defendants, from the district court
within and for the county of Clear Creek, State of Colorado, where the same is now pending, to the circuit court of the United States for the district of Colorado.

Now if the above bounden Thomas Hare and Jonathan H. Pugh, upon the removal of said cause as aforesaid, shall enter in said circuit court of the United States upon the first day of its next session copies of the process in this cause, and of the pleadings, the depositions, testimony, and other proceedings in said cause as required by statute, and shall pay, or cause to be paid, all costs that may be awarded by the said circuit court, if said court shall hold that such cause was wrongfully or improperly removed thereto, then this obligation to be null and void, otherwise to remain in full force and effect.

(S'g'd)	THO'S HARE.	[SEAL.]
(S'g'd)	J. H. PUGH.	[SEAL.]
(S'g'd)	BENJ'N CRABTREE.	[SEAL.]
(S'g'd)	B. A. HUTCHINSON.	[SEAL.]
(S'g'd)	JNO C. STALLCUP, Surety.	[SEAL.]
(S'g'd)	SAM. P. ROSE, "	[SEAL.]

Witness as to 1st sig., Geo. W. Hare.
Witness at signing of J. H. Pugh, Thos. D. Sinclair.
Witness as to third sig., William Griffith.
Witness at signing of B. A. Hutchinson, Thos. D. Sinclair.

29 Endorsed: No. 1478. Thomas Hare and Jonathan H. Pugh *vs.* Fairmount Gold and Silver Mining Company, Gilbert B. Reed, *et al.* Affidavit and bond for removal. Filed Aug. 29, 1877. S'g'd H. H. Atkins, cl'k.

STATE OF COLORADO,
Clear Creek County, } *ss:*

In the District Court of said County of the Special August Term, 1877.

THOMAS HARE and JONATHAN H. PUGH, Trustees
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY, GILBERT B. REED, *et al.* } In Chancery.

Your petitioners, Thomas Hare and Jonathan H. Pugh, trustees, &c., respectfully show unto your honor that they are the plaintiffs in the above-entitled cause; that said cause was commenced at the December term, A. D. 1875, of said court for said county and State, then Territory of Colorado. 30

That your petitioners were, at the commencement of said suit, ever since have been, and now are, citizens and residents of the State of Pennsylvania; that the defendants, Gilbert B. Reed, and all others of said suit with whom there is any controversy in this cause, are now, and ever since the commencement of said suit have been, residents and citizens of the State of Colorado.

That the amount in dispute in this action or suit, exclusive of costs, exceeds five hundred (500) dollars; and petitioners further show that they have reason to believe, and do believe that from the local prejudices and local influences plaintiffs will not be able to obtain justice in said district court within and for said county of Clear Creek; wherefore they pray that said cause may be removed to the circuit court of the United States for the district of Colorado.

THOMAS HARE and
JONATHAN PUGH,
Trustees.

"J." By SAM P. ROSE,
Their Sol.

31 Endorsed: 1478. Thomas Hare and Jonathan H. Pugh *vs.* Fairmount Gold and Silver Mining Co., Gilbert B. Reed *et al.* Petition for removal. Filed Aug. 29, 1877. H. H. Atkins, clerk.

STATE OF COLORADO, } *ss:*
Clear Creek County, }

Pleas had in the district court of the second judicial district of the Territory of Colorado, within and for the county of Clear Creek, before the honorable Amherst W. Stone, one of the justices of the supreme court of said Territory, and sole presiding judge of said district.

To the December Term, A. D. 1875.

Present: Honorable Amherst W. Stone, judge; John C. Easley, sheriff, by J. C. Bennett, deputy; Horace H. Atkins, clerk.

32 THOMAS HARE and JONATHAN H. PUGH, Complainants,
vs.
LORENZO M. FREAS, FAIRMOUNT GOLD and Silver Mining Company, John W. Thackara, Theodore H. Lowe, and George M. Waters, Defendants. } No. 1478. In Chancery.

Be it remembered that heretofore, to wit, on the 26th day of November, A. D. 1877, come the said complainants, by their solicitors, and filed in the office of said court their certain bill of complaint and security for costs, and the same are hereto attached and marked respectively "A," "B."

And thereupon there issued out of and under the seal of said court, two certain writs of summons in said cause, out of said writs being directed to the sheriff of Clear Creek county, and the other of said writs being directed to the sheriff of Gilpin county; and upon the 6th day of December, A. D. 1875, said writs were returned and filed in said cause, and are hereto attached, marked respectively "C," "D."

33 Afterwards and upon the 31st day of December, A. D. 1875, the same being one of the regular days of the said December term of said court, proceedings were had as follows, to wit:

THOMAS H. HARE *et al.*
vs.
FAIRMOUNT G. AND S. M. CO. *et al.* } No. 1478. Foreclosure.

Ordered that this cause stand continued.

Afterward, to wit, at the August special term of dist. court of the first judicial district of the State of Colorado, within and for the county of Clear Creek, before the Honorable Wm. E. Beck, sole judge of said district, there being present, Hon. Wm. E. Beck, judge; John C. Easley, sheriff, by I. C. Bennett, deputy;

Horace H. Atkins, clerk, to wit, on the 16th day of August, the same being one of the regular days of the said August special term, proceedings were had as follows, to wit:

THOMAS HARE, JONATHAN H. PUGH, Trustees,
vs.
FAIRMOUNT GOLD AND SILVER M. CO. *et al.*
No. 1478. Foreclosure.

34 In this cause it appearing to the court, by a stipulation this day filed by the solicitor for complainants and Gilbert B. Reed, Esq., in his own proper person, that the said Gilbert B. Reed has succeeded to all the rights, interests, and defenses of the defendant, John W. Thackara, it is therefore ordered by the court in accordance with said stipulation, that the said Gilbert B. Reed be made a party defendant to said bill, and that he have the right to all the defenses of the said Thackara, which he the said Thackara had when the said bill of complaint was filed, and no further; and that the said complainant have leave to amend his bill of complaint so as to include the name of the said Reed, and the bill as to the said Thackara be, and the same is, dismissed.

And afterwards, to wit, on the same day and year last aforesaid, further proceedings were had in said cause, as follows, to wit:

THOMAS HARE *et al.*, Trustees,
vs.
FAIRMOUNT GOLD AND SILVER M. CO. *et al.*
No. 1478. Foreclosure.

35 It appearing to the court that the said defendants, the Fairmount Gold and Silver Mining Company, Theodore H. Lowe, and Lorenzo M. Freas, were duly served with summons to appear and answer the bill of complaint of the said complainants herein filed at the December term of this court, A. D. 1875, and that they and each of them have failed to appear, answer, plead, or demur to the said bill of complaint, it is therefore ordered, adjudged, and decreed, that the same be taken *pro confesso* as to them, and set for hearing *ex parte.*

And upon the same day, to wit, the day and year last aforesaid, the said complainants, by their solicitor, filed in said cause two certain stipulations and two certain orders, which are thereto attached, marked respectively "E," "F," "G," "H."

Afterwards, and upon the 29th day of August. A. D. 1877, the said complainants, by their solicitors, filed in said cause their certain petition for removal of this cause to the United States district court, at Denver, in said State, and also their affidavit and bond, which said affidavit and bond and petition are hereto attached, marked "I," "J."

And upon the same day, to wit, the 29th day of August, the same being one of the regular days of said August term, proceedings were had as follows:

tiable by assignment or endorsements, and were delivered to the various persons to whom said company was indebted, and that the said promissory notes or bonds bear interest at the rate of six per cent. per annum in gold, and that the same was payable semi-annually.

And this defendant further shows and avers that of the said bonds or promissory notes so made, executed, and delivered by the said Fairmount Gold and Silver Mining Company four thereof for the aggregate sum of eleven thousand eight hundred and thirty-nine dollars and fifty cents ($11,839.50) were made payable to and delivered by said company to John W. Thackara, for money due and owing to him by said company; and ten (10) thereof for the aggregate amount of twenty-eight hundred and twenty-two dollars and thirty-five cents ($2,822.35) were made payable to and delivered by said company to one Abram C. Brown, for sums of money due and owing to him by said company, and the same and each of them were by the said Brown duly endorsed, assigned, transferred, and delivered to the said John W. Thackera, and one of said notes for the sum of twenty dollars was by said company made, executed,
and delivered to one I. P. Harker, and by said Harker en-
42 dorsed, assigned, and delivered to the said John W. Thack-
ara.

And one of said notes, for the sum of one hundred dollars ($100), was, by said company, made, executed, and delivered to one, Swain Thackara, and by him duly endorsed, assigned, and delivered to John W. Thackara.

And defendant further shows that the aggregate amount of said above-described sixteen bonds or promissory notes was the sum of fourteen thousand seven hundred and eighty-one dollars and eighty-five cents ($14,781.85), exclusive of interest.

And defendant further shows that he is informed and believes, and therefore charges the fact to be, that the said above-described sixteen bonds or promissory notes were all that were made, executed, and delivered by said Fairmount Gold and Silver Mining Company, and which said bond and mortgage were made and intended to secure, save, and accepted one for a small amount, which had been lost or mislaid and could not be found.

And defendant further shows that the said John W. Thackara, being the owner of the above-described sixteen bonds or promissory
notes, and the same, and each of them, and all the interest in
43 the same, and each of them, remaining due and unpaid from
the date of each respectively, the said John W. Thackara on,
to wit, the 22d day of March, A. D. 1873, commenced a proceeding by attachment against the said Fairmount Gold and Silver Mining Company to secure the principal and interest due on said bonds or promissory notes, and other moneys due and owing to him, the said Thackara by the said company, and sued out a writ of attachment from the hon. the district court of the 2d judicial district of the Territory of Colorado, in and for the county of Clear Creek, in which

said county the property of said company described in said bill of complaint was situate; and that said writ of attachment was duly levied upon all the property in the said bill of complaint described, as having been conveyed by said mortgage, and that said action was brought, and such suit made returnable to April term of the district court in and for the county and Territory aforesaid; and that at said term the said Fairmount Gold and Silver Mining Company appeared by counsel and defended the same, and the said action was continued from term to term by said defendant until the December term of said, to wit, A. D. 1874, at which said term of said court said cause
came on to be and was tried before the Honorable Moses
44 Hallett, chief justice, and a jury, and a judgment obtained
by the said Thackara against the said Fairmount Gold and Silver Mining Company for the sum of twenty-four thousand six hundred and forty-three dollars and thirty-one cents ($24,643.31), including costs of suit.

And defendant further shows that the sum due and owing on the above sixteen promissory notes for principal and accrued interest at the time of the recovery of the judgment aforesaid, and for which judgment was recovered, was seventeen thousand nine hundred and sixty-eight dollars and sixty-seven cents ($17,968.67), part and parcel of the judgment aforesaid.

And defendant further shows that afterwards, to wit, on the 16th day of February, A. D. 1875, an execution duly issued out of said court and the same was levied upon the property, and all the property described in said mortgage, and upon which said writ of attachment was levied. And that afterwards, to wit, on the 13th day of March, A. D. 1875, said property and every part and parcel thereof was sold by the sheriff of said county of Clear Creek, sold at public sale according to law, to satisfy said execution and costs, and the same and every part thereof was purchased by the said Thackara,
he being the highest bidder thereof; and that upon such
45 sale the said sheriff of said county made, executed, and de-
livered to the said John W. Thackara a certificate of the sale and purchase of such property as by law required.

And defendant further shows that afterwards, and before the time of the redemption had expired, the said John W. Thackara, for a good and valuable consideration, sold and assigned the said certificate of sale to the defendant.

And afterwards, to wit, on the 15th day of December, A. D. 1875, the said property nor any part of the same having been redeemed, the sheriff of said county of Clear Creek made, executed, and delivered to this defendant a deed of conveyance of said property and every part and parcel thereof, and since that time the defendant has been, and now is, the owner of the same.

And this defendant, further answering, shows during all the time said suit of the said John W. Thackara against the said Fairmount Gold and Silver Mining Company was pending and undetermined, the said complainants Thomas Hare and Jonathan H. Pugh, had

full notice and knowledge of the same; and although the said pretended bond was, and had been long overdue, they, nor neither of them interviewed, or claimed, or pretended that they, or either of
them, had any right or claim as trustees or otherwise. And
46 that long after such judgment, execution, and sale, to wit,
on the 26th day of November, A. D. 1875, a bill was filed
herein, and that the same remained upon the docket of the hon. the dist. court of the county of Clear Creek, from said last date, until the June term thereof. A. D. 1877, without having been prosecuted, or any action taken therein.

And this defendant is informed and believes, and therefore charges the truth to be, that neither of said complainants have been asked or requested to commence or prosecute the said suit by any person or persons being or claiming to be holders of any of the claims that said bond and mortgage were made to secure.

And defendant further answering, denies that the said sum of seventeen thousand dollars, and the said interest thereon, remains due and unpaid, or any part thereof, and denies that no actions at law have been commenced or prosecuted to recover the debts secured by said bond and mortgage, but avers the fact and truth to be as is hereinbefore stated, that all or nearly all of the debts intended to be secured by said bond and mortgage have been prosecuted and recovered at law, as before stated herein.

And this defendant denies all and all manner of unlawful
47 combination and confederacy wherewith he is by the said bill
charged, without this, that there is any other matter, cause,
or thing in the said complainants' said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained.

(S'g'd) GILBERT B. REED.

G. B. Reed in person.

STATE OF COLORADO, *Arapahoe County:*

Gilbert B. Reed, being duly sworn, deposes and says, that he is the defendant to the foregoing bill of complaint; that he has read the above answer by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to
the matters therein stated to be on information and belief,
48 and as to those matters he believes it to be true.

(S'g'd) GILBERT B. REED.

Subscribed and sworn to before me this 23d day of November, A. D. 1877.

[SEAL.] ROBERT D. THOMPSON,
Notary Public.

Endorsed: No. 124. Circuit court U. S., district of Colorado. Hare and Pugh, trustees, &c., *vs.* Fairmount G. and S. M. Co. *et al.* Answer of Gilbert B. Reed, a def't. Filed Nov'r 26th, A. D. 1877. S'g'd Edward F. Bishop, clerk. G. B. Reed, *per se.*

And afterwards, and on, to wit, the 10th day of December, A. D. 1877, came again the said complainants by Sam P. Rose, their solicitor, and filed in said court, and in said cause, their replication to the separate answer of Gilbert B. Reed, defendant; and the said replication is in words and figures as follows, to wit.

Replication to Answer of Gilbert G. Reed.

49 UNITED STATES OF AMERICA, *ss:*

In the Circuit Court held within and for the District of the State of Colorado, of the December Term, A. D. 1877.

THOMAS HARE and JONATHAN H. PUGH, trustees, &c.,
vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY, GILBERT B. REED *et al.*
} In Chancery. O. B. for foreclosure.

The Replication of Thomas Hare and Jonathan H. Pugh, Trustees, &c., complainants, to the separate answer of Gilbert Reed, defendant.

The complainants, saving and reserving to themselves all and all manner of advantages of exception to the manifold insufficiencies of said answer, for replication thereto, say that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that said answer of the defendant is uncertain,
50 untrue, and insufficient to be replied unto by these complainants. Without this that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied to, confessed, and avoided, traversed, or denied, is true; all which matters and things these complainants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as by their said bill they have already prayed.

(S'g'd) THOMAS HARE and
JONATHAN H. PUGH,
Trustees, &c.
By SAM P. ROSE,
Their Solicitor.

JOHN C. STALLCUP, *of Counsel.*

Endorsed: No. 124. Thomas Hare and Jonathan H. Pugh, trustees, &c., *vs.* Gilbert Reed, impleaded, &c., Fairmount Gold &

Silver Mining Company *et al.* Replication to answer of Def't Reed. Filed Dec'r 10th, A. D. 1877. S'g'd: Edward F. Bishop, clerk. Sam P. Rose & Jno. C. Stallcap, sol's for compl't.

51 And afterwards, and on, to wit, the 4th day of February, A. D. 1878, the same being one of the regular juridical days of the December term, A. D. 1877, of said court. Present, the Honorable Moses Hallet, district judge. The following proceeding was had, and entered of record in said court, and in said cause, to wit:

Order Fixing Time to Take Testimony.

THOMAS HARE *et al.*, Trustees, &c.,
vs.
FAIRMOUNT COMPANY *et al.*
No. 124. In chancery for an account, &c.

At this day come the said complainants, by S. P. Rose, Esq., their solicitor, and the said defendants, by G. B. Reed, Esq., their solicitor, also come—

And thereupon, as well the said complainants as the said defendants now here consenting thereto—

It is ordered that the said complainants close their testimony in support of their said bill within thirty (30) days from this day, and that the said defendants shall close their evidence in defense within forty-five (45) days after the expiration of the said thirty days.

52 And afterwards, and on, to wit, the 18th day of February, A. D. 1878, the same being one of the regular juridical days of the December term, A. D. 1877, of said court. Present: The Honorable Moses Hallett, district judge, the following proceeding was had and entered of record, in said court and in said cause, to wit:

Order Extending Time to take Testimony.

THOMAS HARE *et al*, Trustees, &c.,
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*
No. 124. In Chancery for an Account, &c.

At this day come the said complainants, by J. Q. A. King, Esq., their solicitor, and the said defendants, by G. B. Reed, Esq., their solicitor, also come, and thereupon on motion of the complainants, and for good and sufficient reasons to the court appearing,

It is ordered that the said complainants close the hearing of their proof herein, on, or before April 4th proximo, and that the said defendants close the hearing of proof in their behalf within forty-five days after April 4th, as aforesaid.

53 And afterwards, and on, to wit, the 7th day of March, A. D. 1878, came again the said complainants, by J. Q. A. King, Esq., their solicitor, and filed in said court, and in said cause

their amended petition and replication, and the said amended petition and replication is in words and figures as follows, to wit:

Amended Petition and Replication.

Page 1.

UNITED STATES CIRCUIT COURT, } *Sct.*
District of Colorado, }

THOMAS HARE and JONATHAN H. PUGH, Trustees, &c., Complainants,
vs. } Amended Bill.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY, G. B. REED *et al.*, Defendants,

To the Honorable Moses Hallett, judge of the United States circuit court for the District of Colorado:

Your petitioners, Thomas Hare and Jonathan H. Pugh, trustees, beg leave to amend their original complaint by stating and charging, that at the time the bond for seventeen thousand dollars was executed and delivered by The Fairmount Gold and Silver Mining Company, said company was actually and in good faith in-
54 debted to the following persons in the following sums, to wit:

Class No. 1.

To Matthew Walker	Aug. 5th, 1868	$50 00
Jacob S. Fish	Aug. 5th, 1868	100 00
Thomas Hare	Aug. 5th, 1868	220 00
William Williams	Aug. 5th, 1868	20 00
Horatio Roop	Aug. 5th, 1868	80 00
Jonathan H. Pugh	Aug. 5th, 1868	50 00
Gustavus Silssert	Aug. 5th, 1868	100 00
Peter Miller	Aug. 6th, 1868	200 00
J. Thornton Weaver	Aug. 7th, 1868	20 00
John Bateman	Aug. 11th, 1868	25 00
Ambrose H. Prichett	Jan. 18th, 1869	70 00
George Myers	Jan. 29th, 1869	10 00
Myers Homiller	Feb. 3d, 1869	10 00
John R. Brownholz	Feb. 22d, 1869	50 00
Peter Miller	Feb. 22d, 1866	100 00
Thomas F. Scattergood	Feb. 23d, 1869	15 00
Edward G. McGlue	Feb. 24th, 1869	20 00
Christian Van Gander	Feb. 27th, 1869	10 00
R. C. Shelmerdine, M. D.	Feb. 27th, 1869	50 00
William B. Moylan	Feb. 27th, 1869	20 00
Geo. M. Highley	Feb. 27th, 1869	20 00
Wm. H. Shelmerdine	Mch. 2d, 1869	100 00
Thomas Hare	Aug. 5th, 1868	333 34
Jacob S. Fish	Aug. 5th, 1868	333 33

To William H. Shelmerdine	Mch. 26th, 1869	$250 00
Jonathan H. Pugh	Mch. 26th, 1869	250 00
Thomas Hare	Mch. 29th, 1869	250 00

55

Peter Miller	Mch. 29th, 1869	50 00
J. L. Sleeper & Son	Apr. 3d, 1869	15 00
Aaron S. Dunlery	Apr. 12th, 1869	15 00
Ezra Willetts	Apr. 17th, 1869	100 00
Matthew Walker	May 31st, 1869	50 00
Samuel B. Ely	June 18th, 1869	80 00
Jonathan H. Pugh	July 9th, 1869	333 33
Thomas Hare	July 9th, 1869	666 67
Mary Ann Vinal	July 15th, 1869	100 00
Matthew Walker	July 24th, 1869	133 33
John B. Ely	June 18th, 1869	70 00
Israel L. Fish	Aug. 28th, 1869	15 00
Peter Miller	Aug. 30th, 1869	200 00
John R. Brownholz	Sept. 9th, 1869	30 00
Jonathan H. Pugh	Sept. 20th, 1869	133 33
Thomas Hare	Sept. 28th, 1699	333 33
Thomas Hare	Oct. 19th, 1869	66 67
Jonathan H. Pugh	Oct. 19th, 1869	66 67
Wm. H. Shelmerdine	Oct. 19th, 1869	10 00
Thomas Hare	Nov. 16th, 1869	1,333 34
Jonathan H. Pugh	Feb. 4th, 1870	133 33
Thomas Hare	Feb. 4th, 1870	266 67
Thomas Hare	Feb. 24th, 1870	368 00
Jacob S. Fish	Feb. 24th, 1870	368 40
John R. Brownholz	Mch. 8th, 1870	66 67
David T. Clinger	Mch. 8th, 1870	66 67
Peter Miller	Mch. 8th, 1870	450 00
Thomas Hare	Mch. 9th, 1870	266 67

56

Jonathan H. Pugh	Mch. 11th, 1870	333 33
Scattergood & Dunlery	Mch. 12th, 1870	66 67
Robert C. Williams	Mch. 15th, 1870	133 33
Chas. W. Williams	Mch. 15th, 1870	66 67
Wm. H. Shelmerdine	May 4th, 1870	1,333 34
Jabez Lewis	May 20th, 1870	266 66
James Durnell	May 21st, 1870	80 00
George C. Hoeflich	May 21st, 1870	10 00
Ezra Pratt	May 21st, 1870	100 00
Horatio Roop	May 21st, 1870	66 67
Matthew Walker	May 23d, 1870	25 00
John Bateman	May 24th, 1870	66 67
Ezra Willetts	May 24th, 1870	25 00

To R. E. Shelmerdine	June 21st, 1870	$66 67
John R. Brownholz	Dec. 2d, 1870	66 66
Samuel Nelson	Aug. 5th, 1868	150 00
Samuel Nelson	May 19th, 1870	25 00

Amounting to the sum of $11,426 42

Class No. 2.

And also the following sums were due and owing by said company at the time the aforesaid mortgage was executed and delivered, and to the following persons, and are intended and were intended to be covered by and embraced in the seventeen thousand dollar bond and mortgage, to wit:

To Thos. B. Wharton	Aug. 13th, 1868	$100 00
Thomas Nelson	Mch. 26th, 1869	100 00
Samuel Bowers	Aug. 20th, 1868	10 00

57

A. C. Brown	Aug. 5th, 1868	250 00
A. C. Brown	Aug. 5th, 1868	333 33
A. C. Brown	July 6th, 1869	183 33
A. C. Brown	Oct. 9th, 1869	680 00
A. C. Brown	Mch. 31st, 1870	350 69
Swain Thackara	Apl. 12th, 1869	100 00
John P. Harker	May 17th, 1869	20 00

Amounting to the sum of $2,127 35

Class No. 3.

Also the said company was justly indebted at the time the aforesaid mortgage was executed and delivered in the following sums, and to the following persons, and which said indebtedness is covered and was intended to be embraced in said mortgage by the parties thereto, to wit:

To Matthew Walker	May 19th, 1870	$50 00
Jacob S. Fish	May 19th, 1870	452 50
Thomas Hare	May 19th, 1870	555 00
Jonathan H. Pugh	May 19th, 1870	540 00
Peter Miller	May 19th, 1870	355 00
John R. Brownholz	May 19th, 1870	66 00
R. C. Shelmerdine	May 19th, 1870	25 00
Wm. H. Shelmerdine	May 19th, 1870	570 12
Ezra Willetts	May 19th, 1870	30 00
R. F. Shannon	May 19th, 1870	50 00
W. Irving Vinal	May 19th, 1870	75 00

Amounting to the sum of $2,769 28

58	Amount of Class No. 1 is the sum of	$11,426	42
	Amount of Class No. 2 is " " "	2,127	35
	Total amount of Class 1, 2, and 3 is	$16,323	05

The complainants aver that the claim of John R. Brownholz, dated December 2d, 1870, and referred to on page four of this amended bill, was due and owing to him by said company at and before the time said mortgage was executed and delivered by said company, and said sum due to said Brownholz was covered by the mortgage, and was intended by mortgagors and mortgagees to be embraced and secured by the mortgage, but no note was executed to Brownholz until 2d December, 1870, after said mortgage was executed, but the debt existed and was created before the mortgage was executed.

The complainants further state and charge that the several dates attached to the several debts above set forth are the true dates when the said notes were executed and delivered by said company to the parties to whom they are made payable, and each based on a valuable consideration, and are due and wholly unpaid, principal and interest; which several sums and *interest* are duly regulated by the bond for $17,000 executed by said company to complainants, as trustees aforesaid.

59 The complainants further state, and charge the fact to be true, that said $17,000 bond and mortgage were intended by the parties to embrace the *then existing* indebtedness of said company and none other, as above set forth, and does *not* cover, nor were they intended to embrace, any debts contracted *after* the date and execution of said bond and mortgage, and no such provision is embraced in either instrument.

The complainants make copies of the legislation and orders of said company, taken from the books of said company, part hereof, and prayed to be read as part of this amended bill, marked "O."

The complainants further state and charge that all of said notes set forth in the forthgoing part of this amended bill in Class No. 1, 2, and 3, are assigned to said complainants, and are in the hands of S. P. Rose, Esq., an attorney-at-law in Denver, Colorado, (and will be filed herein as part hereof, as soon as obtained,) except the notes of William B. Wharton, of date Aug. 13th, 1868, for $100; one note of Thomas Nelson, of date March 26th, 1869, for $100: note of Samuel Powers, of date Aug. 20th, 1868, for $10, which complainants have been unable to obtain from the holders thereof.

60 Also, except the notes of John W. Thackara, A. C. Brown, Swain Thackara, and John P. Harker, upon which a common law suit was instituted by said John W. Thackara, who owned said notes individually and by assignment, which resulted in a judgment and common law execution against said company; and complainants will now give a list of all the claims or notes

owned by said John W. Thackara, which were executed to him by said company and to others, who assigned to John W. Thackara, upon which he instituted his common law suit and give the true dates of the same, to wit:

1	1.	To John W. Thackara	Dec. 13th, 1871	$10,000	00
2	2.	“	Ap'l 17th, 1872	1,789	50
3	3.	“	Ap'l 3d, 1872	30	00
4	4.	“	Ap'l 3d, 1872	20	00
				$11,839	50
5	1.	To A. C. Brown	Aug. 5, 1868	$250	00
6	2.	“	Aug. 5, 1868	333	33
7	3.	“	July 6, 1869	183	33
8	4.	“	Oct. 9, 1869	680	00
9	5.	“	M'ch 31, 1870	350	69
10	6.	“	Ap'r 30th, 1872	60	00
11	7.	“	May 24th, 1872	25	00
12	8.	“	July 2, 1872	190	00
13	9.	“	Aug. 15, 1872	500	00
14	10.	“	Aug. 28, 1872	250	00
61				$2,822	35
15	1.	To Swain Thackara	Ap'l 12, 1869	100	00
16	2.	“ John P. Harker	May 17, 1869	20	00
		Add the 4 notes of J. W. Thackara above		11,839	50
		Whole am't held by John W. Thackara was		$14,781	85

And complainants further state and charge that these last-named sixteen notes, to wit, 4 to John W. Thackara, 10 to A. C. Brown, one to Swain Thackara, and one to John P. Harker, were the only claims owned by said John W. Thackara against the company, and were never delivered to the complainants, or either of them, as trustees or otherwise, and said sixteen last named claims were owned by said John W. Thackara, upon which he instituted his common law suit as aforesaid against the company; and complainants aver and charge the fact to be true that they, or either of the complainants individually or as trustees, never did cause said Thackara to institute said common law suit, nor request nor consent to the bringing of the same, nor approve it after it was brought, but, on the contrary, disapproved it.

The complainants further state and charge the fact to be true that the aforesaid four notes executed to said John W. Thackara by the company, to wit, one for ten thousand dollars issued or executed on 13th Dec. 1871, one for seventeen hundred and eighty-nine

62 dollars and fifty cents, executed on the 17th day of April,
1872, one for thirty dollars, executed on 3d April, 1872, and
one for twenty dollars, executed on 3d April, 1872, all amounting
to eleven thousand eight hundred and thirty-nine dollars and fifty
cents, were each and all executed and delivered to said John W.
Thackara *long after* the execution and delivery of the bond and
mortgage to complainants, of which facts said John W. Thackara
well knew.

The complainants also state and charge the fact to be true, that previous to the time, that two of these bonds, to wit, bond for $10,000, issued or executed on 13th December, 1871. Bond for $1,789.50, issued or executed on April 17th, 1872, were executed and delivered by the company to said John W. Thackara, the same company had made and passed an order or legislation on the books of the company, duly approved by the company and its officers, that the sum of money represented by these two bonds was that part of the salary of the general agent of the company, which, under existing orders or legislation of said company, was not to pe paid until the profits of the company would guarantee such payment.

And said John W. Thackara knew of said order of the company
and accepted said two notes with full knowledge of said order
63 or legislation which formed or entered into the contract, and
said John W. Thackara agreed to accept the notes, and did
accept them with the distinct and explicit agreement and understanding, that said two notes were not to be paid until the profits of the company would guarantee their payment; and complainants aver there never was any profits of said company at any time, and that said two notes had no existence at the time the $17,000 bond and mortgage were executed, and these two bonds known as back salary bonds, were not and were never intended by the parties to be embraced in, or covered by, the mortgage; said mortgage is dated truly and correctly on the 22d Aug., 1870, and was given and executed to secure money borrowed by the company previous to the execution and delivery of said bond and mortgage to the complainants, as the orders and legislation of the company show.

The complainants also state and charge the fact to be true, that that the said John W. Thackara was general agent of said company from Feb. 24, 1869, to Ap'l 17th, 1872.

The complainants further aver and charge the fact to be true, that
two of the notes or bonds executed and delivered to said Thackara,
by the company, to wit, one for $30.00, dated April 13, 1872,
64 and one for $20.00, dated April 3d, 1876, were each executed
and delivered to said Thackara long after said mortgage was
executed and delivered by the company to the complainants, and said John W. Tackara had personal and actual knowledge of the existence of said mortgage when executed, and for what purpose, and its consideration, at time said Tackara accepted said two notes from said company, said two notes being known as drawback bonds. Complainants further aver and charge the fact to be true

and well known to said John W. Tackara at the time he accepted said two notes, that said two notes or bonds were not only not embraced or secured by the mortgage, but that they were executed and delivered to John W. Tackara under and by virtue of the order of legislation of the company, recorded in the books of the company, of which the said Thackara had full knowledge, that these bonds bonds were to be paid out of the first profits of the company; said order and legislation was part and parcel of the contract and was accepted as such by said Thackara at the time that said notes were executed and delivered to him.

The complainants further aver and state the fact to be true, that five of the notes or bonds executed and delivered to A. C. Brown by the company, and by him assigned to John W. Thackara, to wit:

65 One for twenty-five dollars, dated 24th May, 1872;

One for one hundred and ninety dollars, dated 2d July, 1872;

One for five hundred dollars, dated 15th day of August, 1872;

And one for two hundred and fifty dollars, dated 28th August, 1872;

Were each and all executed and delivered to said Brown *long after* said mortgage was executed and delivered by the company to complainants and said A. C Brown and his assignees. John W. Thackara had personal and actual knowledge of the existence of said mortgage when executed and for what purpose, and its consideration at the time said Brown accepted said five notes from said company, said five notes being known as "*drawback bonds.*"

The complainants further aver and charge the fact to be true and well known to said A. C. Brown at the time he accepted said five notes, and well known to said John W. Thackara when, and at the time said notes or bonds were assigned to him; that said notes or bonds were not only *not embraced* or secured by the mortgage, but that they were executed and delivered to A. C. Brown, under and by virtue of the order or legislation of the company, recorded on the books of the company, of which said Brown and Thackara had full knowledge; than these bonds were to be paid out of the *first profits* of the company; said order or legislation was part and parcel of the contract, and was accepted as such by said Brown
66 at the time said notes were executed and delivered to him,
and was well known to said Thackara when they were assigned to him by Brown.

And complainants aver and charge the fact to be true, that there was no "*first profits*" or any other kind of profits of said company.

The complainants make copies of the legislation and orders of said company taken from the books of said company, part hereof, and prayed to be read as part of this amended bill, marked Exhibit "W."

The complainants further state and charge the fact to be true, that of the sixteen notes or bonds owned and held by John W. Thackera, upon which he brought his common law action aforesaid, only seven (7) were executed *before* the mortgage to complainants, and those seven are as follows:

1.	A. C. Brown	Aug. 5, 1868	$250 00
2.	A. C. Brown	Aug. 5, 1868	333 33
3.	A. C. Brown	July 6, 1869	183 33
4.	A. C. Brown	Oct. 9, 1869	680 00
5.	A. C. Brown	Mch. 31, 1870	350 69
6.	Swain Thackara	Apl. 12, 1869	100 00
7.	John P. Harker	May 17, 1869	20 00
	Amounting to the sum of		$1,917 35

These seven bonds were issued to the holders for borrowed money, and are embraced and secured by the mortgage, and they form a part of the indebtedness sued on by John W. Thackara afore-
67 said, in his common law suit, upon which he obtained judgment and sold the mortgage property under common law execution and became the purchaser thereof.

Now your orators state and charge that said John W. Thackara, being virtually a mortgagee, and these seven bonds being covered and embraced in the mortgagee from the company to your orators as above set forth, and he having elected to institute and prosecute his suit at *law* on said seven bonds and obtained judgment against said company, and sold the company's mortgaged property on a *common law execution*, said John H. Thackara well knowing all the time that said seven bonds were secured by the mortgage he, the said Thackara, and his vendee and assignee, Geo. W. Reed, are *estopped* to set up and rely on said seven notes, or said *common law judgments* in this suit, and complainants plead and rely on said estoppel in bar of said Reed, in said seven notes.

Your orators further state and charge, that as said John W. Thackara, the holder and owner of said seven last-named notes, knowing that said mortgage to your orators was given and executed to secure the payment of said seven notes, voluntarily instituted his suit at law against the company, obtained judgment thereon,
68 and caused a common law execution to issue, and levied upon the identical property named in the mortgage aforesaid, pledged to pay his seven notes, caused the sums to be sued under said execution, and he, Thackara, became the purchaser, such levy, sale, and purchase are void, and confer on Thackara no right or title in law or equity, and def't G. W. Reed, an able, dignified, and astute attorney, well knew all these facts and proceedings before he purchased from John W. Thackara, and he stands in no better attitude than his vendor.

Complainants are informed and believe, and charge the fact to be true, that said John W. Thackara was indebted to said G. B.

Reed, and Thackara being in failing or embarrassed circumstances, and unable to pay said Reed, and Reed pressing him, Thackara assigned his certificate of purchase from the sheriff under execution sale to Reed, he, Reed, taking same, agreeing to risk the chances of perfecting his title. Deducting these seven notes, last named, from the sixteen notes held by Thackara, sued on by him, leaves nine notes, four of which were executed to said John W. Thackara, amounting to eleven thousand and thirty-nine dollars and fifty cents, and five were executed to A. C. Brown and assigned to John W. Thackara, amounting to $1,025.00, and all
9 executed after the date of the mortgage; were sued
69 upon through fraud, and in open violation of the contract and agreement, and in utter disregard of the orders and legislation of the company, "that these bonds were not to be paid until the profits of the company would guarantee such payment," and "to be paid out of the first profits of the company," said company being a non-resident defendant to said common law suit, and your orators were not parties to said common law suit, nor are they bound by it in anyway.

Your orators further state and charge, that they are informed and believe, and so state the fact to be true, that said company, nor any of its authorized officers or agents, was or were served with a summons in said common law suit of John W. Thackara, aforesaid, other than by publication or warning in the newspapers, or constructive service, and that a personal judgment was rendered on said publication for the amount claimed by the said Thackara; now your orators are advised to say, that said judgment thus rendered and obtained, in a court of *law* is absolutely void and of no effect, and conferred no authority on the clerk to issue an execution thereon, nor on the sheriff to levy such execution, nor to sell property under the same. That said execution, levy, sale, and certificate of sale, and transfer of certificate to Reed are all void, and of no effect in law or equity.

70 Your orators further state and charge that they are individually and personally interested in the collection of the seventeen thousand dollar bond aforesaid, and the foreclosure of said mortgage, and a sale of the mortgage property, because they hold and own the following notes or bonds of said company executed and delivered by said company to each of your orators, at the time herein stated, upon a valuable consideration paid said company, and which notes or bonds constitute a part of said seventeen thousand dollar bond, and are secured by and intended by the parties to the mortgage to be embraced in the mortgage, and all of them are due and wholly unpaid, principal and interest, to wit:

To Thomas Hare	Aug. 5, 1868	$220 00
Jonathan H. Pugh	Aug. 5, 1868	50 00
Thomas Hare	Aug. 5, 1868	333 34
Jonathan H. Pugh	Mch. 26, 1869	250 00

To Thoms Hare	Mch. 29, 1869	$250 00
Jonathan H. Pugh	July 9, 1869	333 33
Thomas Hare	July 9, 1869	666 67
Jonathan H. Pugh	Sept. 20, 1869	133 33
Thomas Hare	Sept. 28, 1869	333 33
Thomas Hare	Oct. 19, 1869	66 67
Jonathan H. Pugh	Oct. 19, 1869	66 67
Thomas Hare	Nov. 16, 1869	1,333 34
Jonathan H. Pugh	Feb. 4, 1870	133 33
Thomas Hare	Feb. 4, 1870	266 67

71

Thomas Hare	Feb. 24, 1870	368 00
Thomas Hare	Mch. 9, 1870	266 67
Jonathan H. Pugh	Mch. 11, 1870	333 33
Thomas Hare	May 19, 1870	555 00
Jonathan H. Pugh	May 19, 1870	540 00
All amounting to sum of		$6,502 68

Besides interest. In addition to their own individual and personal interest, they state, and charge the fact to be true, that other persons or *cestui que trusts* who hold the notes of said company, sesured by said mortgage, have instructed and directed your orators, as trustees, to institute and prosecute this suit.

Your orators would further state and charge that they have been informed, and believe the fact to be true, that at the time the sheriff was offering the mortgage property at public sale, under the execution of John W. Thackara against said company, and during the crying of the same, and before the property was knocked down, and before the bidding ceased, the public and all persons present at the sale, and all bidders, were publicly informed that the property was under mortgage to your orators, and that he who would buy would do so at his own peril; and that defendant, G. W. Reed, was present and heard the notice or announcement, and that John W. Thackara, the purchaser, before his purchase, heard the notice or announcement.

72 Your orators, not having the original bonds in their possession, (having deposited them with their former attorney, S. P. Rose, Esq., of Denver, Colorado, as above stated, who has them,) beg leave to file copies or duplicates of the same herewith, marked "P," and prayed to be read and considered as part hereof, and will file the original as soon as obtained from S. P. Rose, Esq.

Your orators also make a complete transcript of the record in the case of John W. Thackara against said company above referred to, as part hereof, marked (S,) and prayed to be taken as part of this amended bill, and read as such part.

Your orators further state and charge that for some reason or oversight, not known to them, no certificates of indebtedness were ever issued to the parties named in class three (3), on the fourth and fifth page of this amended bill, although said debts existed, and were *bona fide* and recognized on the books and records of the company, and were due, owing, and unpaid at the time stated in this amended bill in class 3, on page four and five, aforesaid, and they are yet due and wholly unpaid, and secured by the mortgage aforesaid.

Your orators make a tabulated statement of bonds referred to in the answer of defendant Reed, part hereof marked (T,) and prayed to be read as part hereof; also, extracts or copies of the
73 minutes, orders, and legislation of the company, and referred
to herein as part hereof, marked (O,) as aforesaid, and prayed to be read as part of this amended bill, and also a tabulated statement of indebtedness of the company in classes one, two, and three, as above set forth, and marked (V,) and prayed to be read as part hereof.

Your orators further aver that they have not sued a *scire facias*, nor taken any legal or equitable steps (except this suit) to foreclose said mortgage, or get possession of the mortgaged property.

In consideration of the foregoing facts, your orators pray that said mortgage be foreclosed; that the mortgaged property be sold to pay the debts controlled by the trustees, as aforesaid; that the debts of said Thackara, which was secured by the mortgage, and upon which he sued at law, be excluded from the judgment in this case and not permitted to share in the funds arising from the sale of the mortgaged property, and that the other notes on which Thackara sued at law, and which were payable out of the ‘profits of the company and first profits,” be postponed until all the other mortgaged debts controlled by complainants be paid; that a final judgment be also rendered against said company defining the amounts and interest due to the creditors under the mortgage, who are reprepresent[ed] by the trustees.

That the execution sale be quashed, as well as the sheriff's
74 levy, and Thackara's purchase be declared null and void,
and that deft. Reed's deed be set aside and held for naught, and he required to surrender the possession of all said mortgaged property; and they pray for all such orders, judgments, and decrees as the nature of the case demands and as justice and equity requires, and also for all proper relief. This amendment and replication is filed by consent of def'ts' attorney, G. B. Reed, Esq., in lieu of original replication, which complainants are permitted to withdraw, and time given def'ts to answer this amendment.

(Sgd.) JONATHAN H. PUGH, *Trustee.*
(Sgd.) THOMAS HARE, *Trustee.*
(Sgd.) By J. Q. A. KING,
Solicitor for Complainants.

STATE OF PENNSYLVANIA, } *sct.* :
County of Philadelphia, }

This day comes Jonathan H. Pugh and Thomas Hare before me, and made oath that the allegations and statements in the foregoing amended bill as made of their own knowledge are true, and those made from information of others they believe to be true.

Given under my hand and seal, this second day of March, 1878.
[SEAL.] (Sgd.) SAMUEL L. TAYLOR,
Commissioner for Colorado.

75 Endorsed: 124. Hare and Pugh, trustees, *vs.* The Fairmount Gold and S. Mining Co. *et al.* Amended petition and replication Filed March 7th, A. D. 1878. Sgd. Edward F. Bishop, clerk. By Henry Sparnick, dep'ty. King, sol. for pl'ffs.

And on the same day and hour a certain paper writing, marked Exhibit "W," was filed in said court and said cause, in words and figures as follows, to wit:

Extracts from minutes of the board of directors' meeting of the Fairmount Gold and Silver Mining Co., held Philadelphia, Aug 7th, 1867; president, Rev. W. C. Robinson; secretary, John P. Harker.

"The president, being a committee appointed to make a contract with Swain Thackara as general agent of the company, reported the same in writing, stipulating that upon his arrival in Colorado his salary should commence at $5,000 per annum, but he should only draw for his subsistence at the rate of $100 per month until the profits of the company shall guarantee the payment of the above sum of $5,000.

76 "On motion, $10,000 was agreed upon as the amount of the bond to be given by the said Thackara; after which the report was accepted, and John P. Harker added to the committee.

"On motion, Swain Thackara was elected unanimously general agent of the company, to proceed to Colorado Territory according to the agreement this day made."

Extract from minutes of the board of directors' special meeting of the Fairmount Gold and Silver Mining Co., held Philadelphia February 24th, 1869. President, Capt. Nelson; secretary, T. J. Clinger.

"On motion, the committee on the general agent's account read the report, which was accepted, and the committee discharged.

"On motion, J. W. Thackara was instructed to insure our mill and machinery for ten thousand ($10,000) dollars soon as convenient on his arrival in Colorado.

"Resolved, that we accept the resignation of Swayne Thackara, and appoint John W. Thackara agent, under the same terms and agreement as his predecessor. So ordered.

" Swayne handing over to John all books, papers, &c., pertaining to the office.

" It was moved and seconded that an order be drawn on
77 the treasurer in favor of J. W. Thackara, agent, for $513.30. So ordered."

Extracts from minutes of adjourned meeting, held Philadelphia, July 13th, 1869. C. H. Brown, president.. Sec't'y, T. J.Clinger.

"Agent's report read and accepted."

Extracts from the stated meeting of the board of directors of the Fairmount Gold and Silver Mining Co., held Philadelphia, April 17th, 1872. John Russell, president. Sec't'y, W. H. Shelmerdine.

" The report of the committee to effect a settlement with John W. Thackara, general agent, was read, and accepted, and ordered to be spread on the minutes. Agreed to, to wit:

" PHILADA., *April* 17, 1872.

" To the president and board of directors of the Fairmount Gold and Silver Mining Co., Gentlemen:

" Your committee appointed to effect a settlement with J. W. Thackara, gen'l agent of the company, have the honor to submit the following report:

" Upon examination, we find Mr. John W. Thackara was appointed general agent under resolution adopted Feb'y 24th, 1869, and arrived in Colorado March 10th, 1869, terms and condi-
78 tions to be the same as in contract between his predecessor, Mr. Swain Thackara, and the company, as found on the minutes of meeting of Aug. 7th, 1867, page 54.

" Your committee find that the total amount of salary due Mr. John W. Thackara, as general agent, when the company arrive at a paying point from date of appointment and arrival in Colorado, viz., March 10th, 1869, up to April 17th, 1872	$11,789 50
" Less am't of certificate, issued to John W. Thackara, Dec. 13th, 1871	10,000 00
"Amount of certificates to be issued	$1,789 50
" Total am't salary due Mr. John W. Thackara, general agent, for the same period of time, to be paid $100, cash, per month	$3,722 98
" Less amount paid him up to date	2,300 00
" Am't of cash due him	$1,422 98

"(S'g'd) ALFRED SMITH,
"J. H. PUGH,
"JNO. RUSSELL, *Committee.*

"On motion, it was resolved that a certificate of indebtedness for the sum of $1,789.50 be issued to John W. Thackara, 79 general agent, as final settlement of his salary account.

"The resignation of John W. Thackara, general agent, to take effect Ap'l 17, 1872, was read and accepted."

Extracts from minutes of a special meeting of the board of directors of the Fairmount Gold and Silver Mining Company, held Philadelphia, May 9th, 1871. C. H. Brown, president; T. J. Clinger, sec't'y.

"On motion, the officers were authorized to sell (1,000) one thousand additional shares of the capital stock of the Fairmount Gold and Silver Mining Company, being a part of the stock authorized by the stockholders at their last meeting, held May 3d, 1871."

Extracts from minutes of a stated meeting of the board of directors of the Fairmount Gold and Silver Mining [Company], held Philada., December 19th, 1871.

"Resolved, that this company from its profits pay the sum of five thousand dollars upon the 1,000 (one thousand) shares of stock issued according to resolution passed by the board May 9th, 1871, and further, pay all the outstanding certificates of indebtedness before any other profits shall be applied to dividends upon 80 the stock issued by the company, and that certificate of indebtedness be issued to the persons taking said one thousand shares upon full payment thereof, to the amount of 50 per centum. Adopted."

EXHIBIT W.

Endorsed: No. 124. Circuit court U. S. dist. of Colorado. Hare & Pugh, trustees *vs.* Fairmount G. & S. Co. Exhibit W filed with amend. petition. Filed Mar. 7th, 1878. S'g'd Edward F. Bishop, clerk.

81 And afterwards and on, to wit, the 6th day of May, A. D. 1878, the same being in vacation preceding the July term, A. D. 1878, of said court, the following additional proceeding was had and entered of record in said court, and in said cause, to wit:

Order.—Leave to Complainants to withdraw Amended Bill.

THOMAS HARE and JONATHAN H. PUGH,
Complainants,
vs.
THE FAIRMOUNT GOLD AND SILVER MINING Co. *et al.*

No. 124. In Chancery.
For an Account, &c.

This day came complainants, by their attorney, John Q. A. King, and moved the court to permit him to withdraw the amended bill filed in this case on the 7th day of March, 1878, and on consideration:

It is ordered that the motion be sustained and leave granted.

On motion of complainants, by John Q. A. King, attorney, leave is given them to file an amended bill, which was accordingly done. The defendants, by their attorney, G. B. Reed, Esq., being in open court and consenting to the above order.

82 And afterwards and on, to wit, the 6th day of May, A D. 1878, came again the said complainants, by J. Q. A. King, Esq., their solicitor, and filed in said court, and in said cause, their amended bill against the said def'ts, and the said amended bill is in words and figures as follows, to wit:

Amended Bill.

UNITED STATES CIRCUIT COURT, } *sct.*:
District of Colorado, }

THOMAS HARE and JONATHAN H. PUGH, Trustees, &c., Complainants,
against
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY and G. B. REED and others, Defendants.
} Amended Bill.

To the Honorable Moses Hallett, Judge of the United States Circuit Court for the District of Colorado:

Your orators, Thomas Hare and Jonathan H. Pugh, trustees, residents and citizens of the city of Philadelphia, and State of Pennsylvania, would beg leave most respectfully to state and charge, by way of amendment to their original bill and in explanation
83 thereof, that the defendant, "The Fairmount Gold and Silver Mining Company, a corporation created and existing under and [by] virtue of the laws of the said State of Pennsylvania, become and was justly indebted to divers and sundry parties, on and before the 22d of August, 1870, viz:

To Matthew Walker	Note	Aug. 5th, 1868	$50 00
Jacob S. Fish	"	Aug. 5th, 1868	100 00
Thomas Hare	"	Aug. 5th, 1868	220 00
William Williams	"	Aug. 5th, 1868	20 00
Horatio Roop	"	Aug. 5th, 1868	80 00
Jonathan H. Pugh	"	Aug. 5th, 1868	50 00
Gustavus Seissert	"	Aug. 5th, 1868	100 00
Peter Miller	"	Aug. 6th, 1868	200 00
J. Thornton Weaver	"	Aug. 7th, 1868	20 00
John Bateman	"	Aug. 11th, 1868	25 00
Ambrose H. Pritchett	"	Jan'y 18th, 1869	70 00
George Myers	"	Jan'y 29th, 1869	10 00
Myers Homiller	"	Feb'y 3d, 1869	10 00
John R. Brownholz	"	Feb'y 22d, 1869	50 00
Peter Miller	"	Feb'y 22d, 1869	100 00

To Thomas F. Scattergood	Note	Feb'y 23d, 1869	$15 00
Edward S. McGlue	"	Feb'y 24th, 1869	20 00
Christian Van Gunden	"	Feb'y 27th, 1869	10 00
R. C. Shelmerdine, M. D.	"	Feb'y 27th, 1869	50 00
Wm. B. Moylan	"	Feb'y 27th, 1869	20 00
George M. Highley	"	Feb'y 27th, 1869	20 00
Wm. H. Shelmerdine	"	March 2d, 1869	100 00

84

Thomas Hare	"	Aug. 5th, 1868	333 34
Jacob S. Fish	"	Aug. 5th, 1868	333 33
Wm. H. Shelmerdine	"	March 26th, 1869	250 00
Jonathan H. Pugh	"	March 26th, 1869	250 00
Thomas Hare	"	March 29th, 1869	250 00
Peter Miller	"	March 29th, 1869	50 00
J. L. Sleeper & Son	"	April 3d, 1869	15 00
Aaron S. Dunlery	"	April 12th, 1869	15 00
Ezra Willets	"	April 17th, 1869	100 00
Matthew Walker	"	May 31st, 1869	50 00
Sam'l B. Ely	"	June 18th, 1869	80 00
John B. Ely	"	June 18th, 1869	70 00
Jonathan H. Pugh	"	July 9th, 1869	333 33
Thomas Hare	"	July 9th, 1869	666 67
Mary Ann Vinal	"	July 15th, 1869	100 00
Matthew Walker	"	July 24th, 1869	133 33
Israel L. Fish	"	Aug. 28th, 1869	15 00
Peter Miller	"	Aug. 30th, 1869	200 00
John R. Brownholtz	"	Aug. 9th, 1869	30 00
Jonathan H. Pugh	"	Sept. 20th, 1869	133 33
Thomas Hare	"	Sept. 20th, 1869	333 33
Thomas Hare	"	Oct. 19th, 1869	66 67
Jonathan H. Pugh	"	Oct. 19th, 1869	66 67
Wm. H. Shelmerdine	"	Oct. 19th, 1869	10 00
Thomas Hare	"	Nov. 16th, 1869	1,333 34
Jonathan H. Pugh	"	Feb'y 4th, 1870	133 33
Thomas Hare	"	Feb'y 4th, 1870	266 67
Thomas Hare	"	Feb'y 24th, 1870	368 00

85

Jacob S. Fish	"	Feb'y 24th, 1870	368 40
John R. Brownholtz	"	March 8th, 1870	66 67
Peter Miller	"	March 8th, 1870	450 00
David T. Clinger	"	March 8th, 1870	66 67
Thomas Hare	"	March 9th, 1870	266 67
Jonathan H. Pugh	"	March 11th, 1870	233 33
Scattergood & Dunlery	"	March 12th, 1870	66 67
Robert C. Williams	"	March 15th, 1870	133 33
Charles W. Williams	"	March 15th, 1870	66 66

To Wm. H. Shelmerdine	Note	May	4th, 1870	$1,333 34
Jabez Lewis	"	May	20th, 1870	266 67
James Durnell	"	May	21st, 1870	80 00
George C. Hoeflick	"	May	21st, 1870	10 00
Ezra Pratt	"	May	21st, 1870	100 00
Horatio Roop	"	May	21st, 1870	66 67
Matthew Walker	"	May	23d, 1870	25 00
John Bateman	"	May	24th, 1870	66 67
Ezra Willetts	"	May	24th, 1870	25 00
R. C. Sheldmerdine, M.D.	"	June	21st, 1870	66 67
with interest from May 13th, 1870.				
Sam. Nelson	Note	Aug.	5th, 1868	150 00
Sam'l Nelson	"	May	19th, 1870	25 00
Wm. B. Wharton	"	Aug.	13th, 1868	100 00
Thos. Nelson	"	March	26th, 1869	100 00
Sam'l Bowers	"	Aug.	20th, 1868	10 00
A. C. Brown	"	Aug.	5th, 1868	250 00
A. C. Brown	"	Aug.	5th, 1868	333 33
A. C. Brown	"	July	6th, 1869	183 33

86

A. C. Brown	"	Oct.	9th, 1869	680 00
A. C. Brown	"	March	31st, 1870	350 69
Swain Thackara	"	Ap'l	12th, 1869	100 00
John P. Harker	"	May	17th, 1869	20 00
Matthew Walker		May	19th, 1870	50 00
Jacob S. Fish		May	19th, 1870	452 50
Thomas Hare		May	19th, 1870	555 00
Jonathan H. Pugh		May	19th, 1870	540 00
Peter Miller		May	19th, 1870	355 00
John R. Brownholtz		May	19th, 1870	66 66
R. C. Shelmerdine		May	19th, 1870	25 00
W. H. Shelmerdine		May	19th, 1870	570 12
Ezra Willetts		May	19th, 1870	30 00
R. F. Shannon		May	19th, 1870	50 00
W. Irving Vinal		May	19th, 1870	75 00
John R. Brownholtz, for which a note or certificate of indebtedness was executed and delivered to him afterwards, on the 2d Dec. 1870				66 66
Amounting to the sum of				$16,323 05

Your orators charge that all of said several notes, above set forth, are correctly dated at the times they were each executed, and said notes were given for a valuable consideration received by said Fairmount Gold and Silver Mining Company, and said notes or certificates of indebtedness were each delivered by said company to the payees, and each note bears interest at the rate of six per

cent. per annum from its date until paid, except the note of
87 R. C. Shelmerdine, M. D., for sixty-six dollars and sixty
seven cents, dated 21st June, 1870, which bears interest from
13th May, 1870, and all of said interest is payable in gold. Said
notes or certificates of indebtedness will be produced on the hearing
of this cause.

Your orators further state and charge that, in order to secure each and all of the aforesaid notes or certificates of indebtedness, and interest on same, and to secure no other indebtedness, the said Fairmount Gold and Silver Mining Company, did, on the 22d day of August, A. D. 1870, execute and deliver, by its proper officers, to your orators, as trustees, a certain penal bond of that date, for the sum of thirty-four thousand dollars, conditioned however, that the same should be void upon the payment of the sum of seventeen thousand dollars, with interest thereon at the rate of six per cent. per annum, in gold, from the date thereof, the said bond maturing at the expiration of one year from the date thereof, and the said interest was payable half yearly, as by the said bond of the said company there provided, as a copy of the same annexed hereto, marked Exhibit "A," and prayed to be made part of this amended bill, will more fully appear. The original bond will be produced on the hearing of this cause.

Your orators would further aver and charge that the said Fairmount
Gold and Silver Mining Company, on the 22d day of
88 August, A. D. 1870, to secure the payment of the principal
sum and interest mentioned in the said bond last above
named, made and executed under the hands and seals of its proper officers, and under its corporate seal, and delivered to your orators, as trustees aforesaid, a mortgage, conditioned for the payment of the sum mentioned in the said bond as aforesaid, and the interest thereon, according to the tenor and effect of the same, by which said mortgage the said Fairmount Gold and Silver Mining Company conveyed to your orators in fee, the following described property, to wit: All that certain mill, mill site, steam engine, and machinery in said mill, and all the appurtenances thereunto belonging, and the following real estate, mines, or lodes, to wit: Fifteen hundred feet on the Fairmount lode; fifteen hundred feet on the Goodenough lode; eight hundred feet on the Thackara lode; eight hundred feet on the Hemsen lode; eight hundred feet on the General Moorehead load, and eight hundred feet on the Robert Steele lode, together with all the real estate and appurtenances thereunto or in anywise appertaining or belonging, situate in or adjacent to Hukell Gulch, Spanish Bar District, Clear Creek county, Colorado Territory (now State), together with all and singular, the buildings, ways, waters, water courses, rights, liberties, privileges, improvements, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining,
and the reversion, remainder, rents, issues, and profits,
89 thereof; which said mortgage was duly acknowledged by

said mortgagor, and afterwards on the 30th day of August, A. D. 1870, at 9 o'cl'k p. m. of said day, duly filed for record in the office of the recorder of said Clear Creek county, in the Territory of Colorado (now State), and the same was then and there duly recorded in Book 11, pages 17, 18, 19, and 20, of Mortgages in said records of said county, as by the said mortgage and accompanying certificate of acknowledgments and recording will appear, and which are ready to be produced in court, and will be produced on the hearing, and a copy of the same is attached hereto, marked Exhibit "B," and prayed to be taken as part of this amended bill.

Your orators further aver and charge that the said sum of seventeen thousand dollars, with interest from the date aforesaid, remains due and unpaid, and that no proceedings at law have been had to recover the debts secured by said mortgage and bond.

Your orators further aver and charge that the said Fairmount Gold and Silver Mining Company is wholly insolvent, and unable to pay said debts or redeem said property, and that the said mortgaged premises is a meagre and scant security for the said sum mentioned in the bond aforesaid and mortgage, and now due your orators, and that the value thereof is wholly insufficient to pay the amount so due, with costs of this proceeding.

90 Your orators further show that one John W. Thackara (now dead), Theodore H. Lowe, George M. Freas, of the county of Clear Creek and State of Colorado, and George W. Waters of the city of Philadelphia, and State of Pennsylvania, and Gilbert B. Reed, of Arapahoe county, claim to have some interest in the said mortgaged premises, or some part thereof, as judgment creditors or otherwise, which interests, if they have any, has accrued subsequent to the lien of the said mortgage of your orators, and subject thereto.

For as much as your orators are wholly without adequate remedy in the premises, except in a court of equity, and to the end that said Fairmount Gold and Silver Mining Co., Theodore H. Lowe, Lorenzo W. Freas, George W. Waters, and Gilbert B. Reed, who are made party defendants to this amended bill, and were def'ts to original bill, may be required to make full and direct answers to the same, but not under oath, the answers under oath being expressly waived; that an account may be taken in this behalf by or under the direction of this honorable court; that the defendants, or some of them, may be decreed to pay to your orators whatever sum shall appear to be due them as such trustees upon the taking of such account, together with their cost of this proceedings by a short day, to be named by the court; that in default of such payment the said premises may be sold as the court shall direct, to satisfy the amount due your orators
91 and cost; that in case of such sale, and a failure to redeem
therefrom pursuant to law, the defendants and all persons claiming through or under them, or either of them, after commencement of this suit, may be forever barred and foreclosed of all right

or equity of redemption of said mortgaged property, and that your orators may have such other and further and general relief in the premises as equity may require, and to your honor may seem just and proper; that a summons in chancery do issue, directed, &c., commanding, &c., that said defendants do answer this amended bill, &c. They pray for all general and proper relief.

(S'g'd) THOMAS HARE,
(S'g'd) JONATHAN H. PUGH, *Trustees, &c.*
(S'g'd) By JOHN Q. A. KING, *Solicitor.*

Endorsed: Thomas Hare and Jonathan H. Pugh, trustees, *vs.* The Fairmount Gold and Silver Mining Co. and others. Amended bill. King, solicitor.

92 EXHIBIT "A."

Know all men by these presents, that the Fairmount G. & S. Mining Co., a corporation created by the legislature of Penna., (hereinafter called the obligors,) are held, and finally bound unto Thomas Hare and Jonathan H. Pugh, of the city of Philada., (hereinafter called the obligees,) in the sum of thirty-four thousand dollars, "lawful money of the U. S. of America, to be paid to the said obligees, their certain att'ys, executors, administrators, or assigns, to which payment, well and truly to be made, the said corporation do bind and oblige themselves and their successors firmly by these presents. Sealed with their seal, dated the twenty-second day of August, in the year of our Lord one thousand eight hundred and seventy.

The condition of this obligation is such that if the above bounden obligors, their successors, or any of them, shall, and do, well and truly pay or cause to be paid unto the above-named obligees, their certain attorneys, executors, administrators, or assigns, the just sum of seventeen thousand dollars, lawful money aforesaid, at the expiration of one year from the date hereof, together with interest thereon, at the rate of six per cent. per annum, payable half yearly in gold, without any fraud or further delay, then the above obligation to be void, else to be and to remain in full force and virtue.

93 Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of interest as aforesaid for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall be at the option of the said obligees, their executors, administrators, or assigns, become due and payable immediately, and payment of said principal debt and all interest thereon may be enforced and recovered at once, anything herein contained to the contrary thereof notwithstanding; and it is hereby declared and agreed that the said debt or principal sum of seventeen thousand dollars is the same which by an indenture of mortgage of even date herewith between the above-named obligors and obligees, to which adhesive stamps of the internal revenue of the U. S. of the value of or denomination of seventeen dollars had been previously duly

affixed, is secured upon a certain mill, mill site, steam engine, and machinery in said mill and all the appurtenances thereunto belonging, and the following real estate, mines, or lodes, to wit:

Fifteen hundred feet on the Fairmount lode,
" " " " " Goodenough "
Eight " " " " Thackara "
" " " " " Hansen "
" " " " " Gen. Moorehead lode and
" " " " " Robert Steele "

94 together with all the real estate and appurtenances thereunto, or in anywise appertaining, or belonging, situate in, or, and adjacent to Hukill Gulch, Spanish Bar District, Clear Creek Co., Colorado Ter.

[CORPORATION SEAL.]

CHAS. H. BROWN,
Pres. Fairmount G. & S. Mining Co.
T. J. CLINGER,
Sec'ty Fairmount G. & S. Mining Co.

Sealed and delivered in the presence of—the word "corporation" above 9th line, "successors" above 14th line, "in gold" above 19th line, being first interlined, and "heirs," "executors," "administrators" on 9th and 14th lines being first erased—

W. W. ASHTMAN.
THOS. J. ASHTON.

Exhibit "B."

[Seventeen *thousand* dollars int. rev. stamps duly cancelled, &c.]

This indenture made the twenty-second day of August, in the year of our Lord one thousand eight hundred and seventy, between the "Fairmount G. & S. Mining Co.," a corporation created by the Legislature of Penna., of the first part, and Thomas Hare and Jonathan H. Pugh, of the city of Philada., of the other part.

Whereas the said "Fairmount G. & S. Mining Co.," in
95 and by their certain obligation or writing obligatory under their corporate hand and seal, duly executed, bearing even date herewith, stand bound unto the said Thomas Hare and Jonathan H. Pugh in the sum of thirty-four thousand dollars, lawful money of the U. S. of America, conditioned for the payment of the just sum of seventeen thousand dollars, lawful money aforesaid, at the expiration of one year from the date thereof, together with interest thereon at the rate of six per cent. per annum, payable half yearly in gold, without any fraud or further delay.

Provided, however, and it is thereby expressly agreed, that if *that if* at any time default shall be made in the interest as aforesaid for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt as aforesaid shall at the *the* option of the said Thomas Hare and Jonathan H. Pugh, their executors, administrators, or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, anything therein contained to the contrary thereof notwithstanding, as in and by the said recited obligation and the condition thereof, relation being thereto had, may more fully and at large appear.

Now this indenture witnesseth that the said Fairmount G. and S. Mining Co., as well for and in consideration of the aforesaid
deed or principal sum of seventeen thousand dollars, and for
96 the better securing the payment of the same, with interest,
as aforesaid, unto the said Thomas Hare and Jonathan H. Pugh, their executors, administrators, or assigns, in discharge of the said recited obligation, as for and in consideration of the further sum of one dollar unto them in hand, well and truly paid by the said Thomas Hare and Jonathan H. Pugh at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and delivered, enfeoffed, released, and confirmed, and by these presents do grant, bargain, sell, enfeoff, and confirm unto the said Thos. Hare and Jonathan H. Pugh, their heirs and assigns, all that certain mill, mill site, steam engine, and machinery in said mill, *mill site, steam engine, and machinery in said mill,* and all the appurtenances thereunto belonging, and the following real estate, mines, or lodes, to wit:

Fifteen hundred feet on the Fairmount lode,
" " " " "
" " " Goodenough lode,
" " " Thackara "
Eight hundred " " Hansen "
" " " Gen. Moorehead lode, and
" " " Robert Steele "

together with all the real estate and appurtenances thereunto or in anywise appertaining or belonging, situate or adjacent to Hukill Gulch, Spanish Bar District, Clear Creek Co., Colorado Ter.,
together with all and singular the buildings, ways, water,
97 water course, rights, liberties, privileges, improvements,
hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the revisions and remainders, rents, issues, and profits thereof.

To have and to hold the said mill, mill sites, lodes, and mines, machinery, hereditaments, and premises hereby granted or mentioned and intended to be with the appurtenances, unto the said Thomas Hare and Jonathan H. Pugh, their heirs and assigns forever.

Provided, nevertheless, that if the said Fairmount Gold and Silver Mining Co., their successors or assigns, do and shall well and truly pay, or cause to be paid, unto the said Thomas Hare and Jonathan H. Pugh, their executors, administrators, or assigns, the aforesaid debt or principal sum of seventeen thousand dollars, on the day and time hereinbefore mentioned and appointed for the payment of the same, together with interest as aforesaid, without any fraud or further delay and without any deduction, defalcation, or abatement to be made of anything for or in respect of any taxes, charges, or assessments whatever, that then and from thenceforth, as well this present indenture and the estate hereby granted as the said recited obligation shall cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise, notwithstanding; and provided also that it shall and may be lawful for the said Thomas Hare and Jonathan H. Pugh, their executors, administrators, or assigns, when and as soon as the 98 principal debt or sum hereby secured shall become due and payable as aforesaid, or in case default shall be made for the space of thirty days in the payment of interest on the said principal sum after any payment thereof shall fall due as aforesaid, to sue out forthwith a writ, or writs, of *scire facias* upon this indenture of mortgage, and to proceed thereon to judgment and execution for the recovery of the said principal debt and all interest due thereon without further stay, any law, usage, or custom, to the contrary notwithstanding.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals. Dated the day and year first above written.

[CORPORATION SEAL.]

CHAS. H. BROWN,
Pres. Fairmount G. and S. Mining Co.
T. J. CLINGER,
Sec'y Fairm't G. and S. Co.

Sealed and delivered in the presence of—the said indenture having first had affixed thereto revenue stamps of the United States of the denomination, am't, or value of seventeen dollars, and the words "heirs, executors, administrators," on the 12th line of this page being first erased, and the words "in gold" being first interlined between the 14th and 15th line of 1st page—

THOMAS S. ASHTON.
W. W. ASHTMAN.

99 STATE OF PENNSYLVANIA, *City and County of Philadelphia:*

On the twenty-fifth day of Aug., A. D. 1870, before me, a commissioner of deeds for the Territory of Colorado, personally appeared the above-named Charles Brown, president of the said corporation, and T. J. Clinger, sec'y of the said corporation, and in due form of law acknowledged the above indenture of mortgage to be the act and deed of the said corporation, and desired the same might be recorded as such; the said Charles Brown being duly sworn, deposes and says that he was personally present at the execution of the above-written indenture, and saw the common seal of the said corporation duly affixed thereto, and that the said seal so affixed thereto is the common and corporate seal of the Fairmount G. and S. Mining Co., and that the above-written indenture was duly sealed and delivered by and as and for the act and deed of the said corporation, for the uses and purposes therein mentioned, and that the name of this deponent subscribed to the above indenture as president of said corporation is of this deponent's own proper handwriting.

Witness my hand and seal the day and year aforesaid. The above indenture being duly acknowledged, and the above 100 affidavits duly sworn to and subscribed before me the words "in gold," being first interlined between the 14th and 16th lines of first page, and heirs, executors, and administrators first erased on the12th line of this page, and of the said corporation, interlined between the 3d and 4th lines of this acknowledgment.

SAM'L S. TAYLOR,
Commissioner for Colorado.

Endorsed as follows: "Mortgage. The Fairmount Gold and Silver Mining Company to Thomas Hair and Jonathan H. Pugh."

TERRITORY OF COLORADO, }
Clear Creek Co., } *ss:*

I hereby certify that the within instrument was filed in this office for record Aug. 30th, 1870, at — o'clock p. m., and recorded, Book No. 11, pages 17, 18, 19 and 20, of Mortgages.

WM. SPEARMAN.

Fees, $3.50.

Filed U. S. circuit court Nov. 2, 1877.

Endorsed: 124. Thomas Hare and Jonathan H. Pugh, trustees, &c., *vs.* The Fairmount Gold and Silver Mining Co. *et als.* Bill (amended) and exhibits. Filed May 6th, A. D. 1878. S'g'd Edward F. Bishop, clerk. By Henry Sparnick, deputy. King, sol.

101 And afterwards and on, to wit, the 27th day of May, A. D. 1878, came the said Gilbert B. Reed, in his own proper person, and filed in said court and in said cause his answer to amended bill herein.

And the said answer to amended bill herein is in words and figures as follows, to wit:

Answer of Reed to Amended Bill.

UNITED STATES OF AMERICA, *State of Colorado:*

In the United States Circuit Court for the District of Colorado.

The answer of Gilbert B. Reed, one of the defendants, to the amended bill of complaint of Thomas Hare and Jonathan H. Pugh, trustees, &c.

This defendant, now and at all times hereinafter saving to himself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says:

That he admits that on the 22d day of August, A. D. 1870, The Fairmount Gold and Silver Mining Company was indebted
102 to divers parties in small sums of money, but denies that the same amounted to seventeen thousand ($17,000.00) or near that sum.

Defendant further admits that the said mining company, by its officers, on the date aforesaid, made, executed, and delivered to complainants, as trustees, a certain bond in writing obligatory in the penal sum of thirty-four thousand dollars, ($34.000.00,) conditioned that the same should be discharged upon the payment of seventeen thousand dollars, as it is in and by said bill of complaint stated.

This defendant, further answering, admits that, to secure the said sum of seventeen thousand dollars mentioned in said bond or writing obligatory, the said Fairmount Gold and Silver Mining Company, by its officers, made the mortgage in the said bill mentioned and upon the property in the said bill of complaint described to the complainants, but avers that the said conveyance was made in trust to said complainants, and the said bond or writing obligatory was made, executed, and delivered to said complainants to secure divers sums then due and owing to divers persons, and to secure the payment of certain debts thereafter to be contracted, the aggregate amount of all such indebtedness not to exceed the sum of said seventeen thousand dollars.

And defendant, further answering, avers the fact to be that the said sum of seventeen thousand dollars, in the said bond or writing obligatory mentioned, and which the said mortgage was
103 made to secure, was the same indebtedness due and owing to divers persons, and also to provide security for debts thereafter to be contracted by the said company.

And defendant, further answering, avers that the said Fairmount Gold and Silver Mining Company made, executed, and delivered the said bond and the said mortgage to plaintiffs as trustees to secure the said several amounts, at that time due and owing to divers persons from said company, and debts thereafter to be contracted, not to exceed, together with those then due and owing, the said sum of seventeen thousand dollars.

And defendant further avers that the indebtedness at that time due and owing, and all debts contracted after that time under the said bond and mortgage, were evidenced by certain notes or bonds of the said company, executed by the proper officers of said company, and under the seal thereof, and were made negotiable by assignment or endorsements, and were delivered to the various persons to whom said company was indebted, and that the said promissory notes, or bonds, bore interest at the rate of six per cent. per annum in gold, and that the same was payable semi-annually.

And this defendant further shows and avers that of the said bonds or promissory notes, so made, executed, and delivered by the said Fairmount Gold and Silver Mining Company, four thereof for the aggregate sum of eleven thousand eight hundred and
104 thirty-nine dollars and fifty cents ($11,839.50) were made
payable to and delivered by said company to John W. Thackara for money due and owing to him by said company, and ten (10) thereof for the aggregate amount of twenty-eight hundred and twenty-two dollars and thirty-five cents ($2,822.35) were made payable to and delivered by said company to one Abram C. Brown, for sums of money due and owing to him by said company, and the same and each of them were by the said Brown duly endorsed, assigned, transferred, and delivered to the said John W. Thackara, and one of said notes, for the sum of twenty dollars, was by said company made, executed, and delivered to one I. P. Harker, and by said Harker endorsed, assigned, and delivered to the said John W. Thackara. And one of said notes for the sum of one hundred dollars was by said company made, executed, and delivered to one, Swain Thackara, and by him duly endorsed, assigned, and delivered to John W. Thackara.

And defendant further shows that the aggregate amount of said above-described sixteen bonds, or promissory notes, was the sum of fourteen thousand seven hundred and eighty-one dollars, ($14,781.85,) exclusive of interest.

And defendant further shows, that a part of the above-described bonds, or notes, sixteen in number, are embraced in and scheduled in plaintiffs' amendment to their said bill of complaint, and
105 the balance thereof are not scheduled, nor therein described.

And defendant further shows that the said John W. Thackara, being the owner of the above-described sixteen bonds or promissory notes, and the same, and each of them, and all the interest on the same, and each of them, remaining due and unpaid from the date of each respectively, the said John W. Thackara on, to wit, the 22d day of March, A. D. 1873, commenced a proceeding by attachment against the said Fairmount Gold and Silver Mining Company, to secure the principal and interest due on said bonds or promissory notes, and other moneys due and owing to him, the said Thackara, by the said company, and sued out a writ of attachment from the honorable the district court of the 2d judicial district of the Territory of Colorado, in and for the county of Clear Creek, in which said county the property of said company, described in said bill of complaint, was situated, and that said writ of attachment was duly levied upon all the property in the said bill of complaint described, as having been conveyed by said mortage, and that said action was brought and such suit made returnable to the April term of the district court in and for the county and Territory aforesaid, and that at said term the said Fairmount Gold and Silver Mining Company appeared by counsel and defended the same, and the said action was continued from term to term by said defendant until the 106 December term of said court, A. D. 1874, at which said term of said court said cause came on to be and was tried before the Honorable Moses Hallett, chief justice, and a jury, and a judgment obtained by the Thackara against the said Fairmount Gold and Silver Mining Company for the sum of twenty-four thousand six hundred and forty-three dollars ($24,643.00), including costs of suit.

And defendant further shows that the sum due and owing on the above sixteen promissory notes for principal and accrued interest, at the time of the recovery of the judgment aforesaid, and for which judgment was recovered, was seventeen thousand nine hundred and sixty-eight dollars and sixty-seven cents ($17,968.67), part and parcel of the judgment aforesaid.

And defendant further shows that afterwards, to wit, on the 16th day of February, A. D. 1875, an execution duly issued out of said court, and the same was levied upon the property, and all the property described in said mortgage, and upon which said writ of attachment was levied, and that afterwards, to wit, on the 13th day of March, A. D. 1875, said property, and every part and parcel thereof, was sold by the sheriff of said county of Clear Creek, at public sale, according to law, to satisfy said execution and costs, and the same, and every part thereof, was purchased by the said Thackara, 107 he being the highest bidder therefor, and that upon such sale the said sheriff of said county made, executed, and delivered to the said John W. Thackara a certificate of the sale and purchase of such property, as by law required.

And defendant further shows that afterwards, and before the time of the redemption had expired, the said John W. Thackara, for a good and valuable consideration, sold and assigned the said certificate of sale to this defendant, and afterwards, to wit, on the 15th day of December, A. D. 1875, the said property, nor any part of the same having been redeemed, the sheriff of said county of Clear Creek made, executed, and delivered to this defendant a deed of conveyance of said property, and every part and parcel thereof, and since that time the defendant has been, and now is, the owner of the same.

And this defendant, further answering, says that he is informed by the former attorney of the Fairmount Gold and Silver Mining Company, residing in the city of Philadelphia, and the former officers of said company, (all of whom were familiar with the officers of said company,) and therefore avers the truth and fact to be, that save and except the bonds or notes hereinbefore described as having been sued upon, and judgment obtained thereon at law, and save and except one bond or note for the sum of one hundred and fifty dollars, bearing date August 5th, 1868, payable to Samuel 108 Wilson, and one for the sum of twenty-five dollars, bearing date May 19th, 1870, also payable to said Samuel Wilson, and one bond or note for the sum of one hundred dollars, bearing date August 13th, 1868, and payable to one William B. Wharton, not one of all the bonds or notes in said complaint described and contained in said schedule were due and owing by the said Fairmount Gold and Silver Mining Company at the time of the commencement of this suit, and that the only notes or bonds now due and owing, if any, are those herein described as due and owing to the said Wilson and the said Wharton, and that save and except the said last-mentioned notes, and the said notes hereinbefore described upon which suit was brought, and judgment obtained, each and every of the said notes or bonds in the said amendment to said complaint contained and scheduled, have been paid and taken in by the said Fairmount Gold and Silver Mining Company, and had been long prior to the commencement of this suit as plaintiffs well know, and the same should have been cancelled and destroyed, but some of the present officers of said Fairmount Gold and Silver Mining Company conniving with the said plaintiffs to injure the defendant herein, now falsely and fraudulently pretend that such notes and bonds are still due and owing, and that the same are a lien and incumbrance upon said property.

And this defendant hereby offers to pay to the holders of
109 said notes so made and issued to the said Wilson and Wharton whatever sum of money may be due and owing them.

And this defendant, further answering, says that he denies that the said bond and mortgage was not made to secure other indebtedness than that in the said amendment to said bill of complaint described, but avers that each and every of the said notes upon which suit was brought, as hereinbefore stated, were secured by said bond and mortgage.

And this defendant further answering, shows that during all the time said suit of the said Jonn W. Thackara against the said Fairmount Gold and Silver Mining Company was pending and undetermined, the said complainants, Thomas Hare and Jonathan H. Pugh, had full notice and knowledge of the same, and although the said pretended bond was, and had been long, overdue, they, nor neither of them interviewed or claimed, or pretended that they or either of them had any right or claim, as trustees, or otherwise; and that long after judgment, execution and sale, to wit, on the 26th of November, A. D. 1875, a bill was filed herein, and that the same remained upon the docket of the honorable the district court of the county of Clear Creek from said last date, until the June term thereof, A. D. 1877, without having been prosecuted or any action taken therein.

And this defendant is informed and believes, and there-
110 fore charges the truth to be, that neither of said complainants have been asked or required to commence or prosecute the said suit, by any person or persons, being or claiming to be

holders of any of the claims that said bond and mortgage were made to secure.

And defendant, further answering, denies that the said sum of seventeen thousand dollars, and the interest thereon, remains due and unpaid, or any part thereof, except as herein before stated, and denies that no action at law has been commenced or prosecuted to recover the debts secured by said bond and mortgage; but avers the fact and truth to be as is hereinbefore stated, that all, or nearly all, of the debts that remained unpaid, intended to be secured by said bond and mortgage, have been prosecuted and recovered at law, as before stated herein.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged. Without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this hon. court shall direct; and humbly prays to be hence dismissed with his
111 reasonable costs and charges in this behalf most wrongfully sustained.

(S'g'd) GILBERT B. REED.

G. B. Reed in person.

STATE OF COLORADO, *Arapahoe County :*

Gilbert B. Reed, being first duly sworn, deposes and says, that he is the defendant to the foregoing bill of complaint; that he has read the above answer by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes it to be true.

(S'g'd) GILBERT B. REED.

Subscribed and sworn to before me, this 27th day of May, A. D. 1878.

(S'g'd) ROBERT D. THOMPSON, [SEAL.]
Notary Public.

Endorsed: No. 124. Circuit court U. S., district of Colorado. Hare and Pugh, trustees, &c., *vs.* Fairmount G. and S. M. Co. *et al.* Answer of G. B. Reed, a def't, to amended bill. Filed May 27th, A. D. 1878. S'g'd Edward F. Bishop, clerk. By Henry Sparnick, dep'ty. G. B. Reed *per se.*

112 And afterwards and on, to wit, the 13th day of June, A. D. 1878, came again the said complainants, by J. Q. A. King, Esq., their solicitor, and filed in said court and in said cause their

replication to the answer of G. B. Reed to the amended bill, and the said replication is in words and figures, as follows, to wit:

Replication to Answer of Reed.

UNITED STATES OF AMERICA, *State of Colorado:*

In the United States Circuit Court for the District of Colorado.

THOMAS HARE and JONATHAN H. PUGH, Trustees, &c., Plaintiffs,
against
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY, G. B. REED,
et al., Defendants.

The complainants, Thomas Hare and Jonathan H. Pugh, trustees, &c., saving and reserving to themselves all and all manner of advantages of exceptions to the manifold insufficiences of the answer of G. B. Reed, filed herein to complainants' amended bill, for replication thereunto says, that they will aver and prove their said amended bill to be true, certain, and sufficient in the law to be answered unto; and that said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by those complainants; without this, that any other matter or thing whatsoever 113 in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true: all of which matters and things these complainants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray, as in and by their said amended [bill] they have already prayed.

(S'g'd) THOMAS HARE and
JONATHAN PUGH,
Trustees.
By JOHN Q. A. KING,
Solicitor.

Endorsed: No. 124. U. S. circuit court for State of Colorado. Hare & Pugh, trustees, *vs.* Fairmount Gold and Silver Mining Company, &c. Replication. Filed June 13, A. D. 1878. Signed, Edward P. Bishop, clerk. By Henry Sparnick, dep'ty. J. Q. A. King, solicitor.

And afterwards and on, to wit, the 14th day of June, A. D. 1878, the same being in vacation, preceding the July term, A. D. 1879, the following proceeding was had and entered of record in said court and in said cause, to wit:

114 *Order—Leave to Complainants to Take Testimony.*

THOMAS HARE and JONATHAN H. PUGH, Trustees,
vs. No. 124.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*

On motion of J. Q. A. King, Esq., of counsel for complainants, it is ordered that the said complainants have leave to examine Jonathan H. Pugh and others, witnesses in their behalf, upon a commission, to be directed to Thomas P. Clarke, a commissioner of the circuit court for the eastern district of Pennsylvania, residing at 501 Chestnut street, Philadelphia, and interrogatories attached to the said commission, notice of the suing out of such commission being given as required by the 67th rule of equity practice in the circuit courts of the United States.

And afterwards and on, to wit, the 3d day of July, A. D. 1878, the same being one of the juridical days of the July term, A. D. 1878—present, the Honorable John F. Dillon, circuit judge, and the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order—Stipulation filed as to Testimony, &c.

THOMAS HARE *et al.*, Trustees,
vs.
FAIRMOUNT GOLD AND SILVER MINING CO. *et al.*
In Chancery.
For an Account, &c.

115 At this day came the said complainants, by J. Q. A. King and S. P. Rose, Esq'r's, their solicitors, and present to the court a stipulation as to the name of commissioners heretofore appointed to take testimony herein, which by leave is filed.

And thereupon the said S. P. Rose, Esq., by leave of court, saith he will and doth withdraw his appearance herein as solicitor for the said complainants.

And afterwards and on, to wit, the 3d day of July, A. D. 1878, came again the said complainants, by their solicitor, and filed in said court and in said cause a certain stipulation as to complainants' depositions herein, and the said stipulation is in words and figures as follows, to wit:

Stipulation as to Testimony.

United States Circuit Court District of Colorado.

THOMAS HARE and JONATHAN H. PUGH, Trustees, &c., Plaintiffs,
vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY *et als.*
Stipulation and Agreement.

116 It is agreed and stipulated by the parties to the above suit that a mistake was made in the order selecting a commissioner to take complainants' depositions in Philadelphia, in this, that said commissioner is called "Thomas P. Clark" when it should have been "Charles P. Clark," and that the commissioner shall issue to send Charles P. Clark to take said depositions or interrogatories and cross-interrogatories, to have the same force and

effect as if the name of said Charles P. Clark had originally been put in said order, July 3d, 1878.

(S'g'd) JOHN Q. A. KING,
Solicitor for Plaintiffs.
(S'g'd) G. B. REED,
For Def'ts.

Endorsed: No. 124. Circuit court. Hare and Pugh, trustees, *vs.* The Fairmount Gold and Silver Mining Co. *et als.* Stipulation. Filed July 3d, A. D. 1878. S'g'd Edward F. Bishop, clerk.

And afterwards and on, to wit, the 10th day of July, A. D. 1878, the same being one of the regular juridical days of the July term, A. D. 1878, of said court—present, Honorable John F. Dillon, circuit judge, and the Honorable Moses Hallett, district
117 judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order—Time to take Testimony Extended.

THOMAS HARE and JONATHAN H. PUGH, Trustees,
vs.
FAIRMOUNT GOLD AND SILVER MINING Co. *et al.*
No. 124. In Chancery. For an Account, &c.

At this day comes the said complainants by J. Q. A. King, Esq., their solicitor, and the said defendants by G. B. Reed, Esq., their solicitor, also come, and thereupon, on motion of the said complainant, it is ordered that the time to take testimony herein, as well by the complainants as by the said defendants, be enlarged until the first day of the next term of the court.

And afterwards and on, to wit, the 3d day of December, A. D. 1878, the same being one of the regular juridical days of the December term, A. D. 1878, of said court—present, the Honorable Moses Hallet, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order—Depositions to be Opened, &c.

THOMAS HARE *et al.*
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*
No. 124. In Chancery. For an Account, &c.

118 At this day, on motion of the said complainants, it is ordered that all depositions in this cause now in the clerk's office remaining unopened may be opened, published, and filed as of this day.

Depositions—Dec. 3d, A. D. 1878.

And afterwards and on, to wit, the 3d day of December, A. D. 1878, the depositions of Jonathan H. Pugh, Thomas Hare, Jacob

S. Fish, Alfred Smith, John Russell, William W. Ashman, and T. J. Clinger, taken on behalf of the said complainants, were opened, published, and filed in said court and in said cause, to wit:

Here follows interrogatories served on defendants, not herein set forth.

Here follows cross-interrogatories served on plaintiffs, not herein set forth.

Notice.

HON. G. B. REED: You are hereby notified that I have
119 filed, as attorney for Thomas Hare and Jonathan H. Pugh, trustees of the Fairmount Gold and Silver Mining Company, and creditors of the same, their general replication to your answer to the amended bill filed by Hare and Pugh, trustees, against said company and others, pending in the circuit court of the U. States for Colorado, thus forming the issue. That as attorney for said trustees I have also filed interrogatories to be propounded to complainants, witnesses, residing in Philadelphia, Penn., whose depositions are to be taken before Charles P. Clarke, commissioner, No. 501 Chestnut street, room No. 3, second story, Philadelphia, Penn., and that I have applied to the judge of said court (Hon. Moses Hallett) for an order appointing said Charles P. Clarke, com'r, to take said depositions.

You are notified and requested to file in said case, and said court, cross-interrogatories, if you desire. I send you a copy of the interrogatories.

(S'g'd) THOMAS HARE and
JONATHAN H. PUGH,
Trustees, &c.
By JOHN Q. A. KING, *Solicitor.*

DENVER, COL., *June* 14, 1878.

UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

I hereby certify that I executed the within notice by delivering a copy thereof to G. B. Reed, personally; also by delivering
120 complainants' interrogatories to said Reed at Denver, in said district, on the 15th day of June, A. D. 1875.

(S'g'd) P. P. WILCOX, *U. S. Marshal.*

Marshal's Fees.

Service of notice	$2 00
Travel	06
Total	$2 06

Fees paid by plaintiffs' att'y.

Endorsed: 124. Circuit court. Hare & Pugh, trustees, *vs.* Fairmount Gold and Silver Mining Co. *et als.* Notice of filing interrogatories, &c. Filed June 15th, A. D. 1878. S'g'd Edward F. Bishop, clerk. By Henry Sparnick, dep'ty. King, for compl'ts.

Order.

In the Circuit Court for the District of Colorado.

THOMAS HARE *et al.*
vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY, *et al.*

121 At Chambers, in vacation, June 14th, A. D. 1878.

On motion of J. Q. A. King, Esq., of counsel for complainants, it is ordered :

That the said complainants have leave to examine Jonathan H. Pugh and others, witnesses in their behalf, upon a commission, to be directed to Thomas P. Clarke, a commissioner of the circuit court for the eastern district of Pennsylvania, residing at 501 Chestnut street, Philadelphia, and interrogatories attached to the said commission, notice of the suing out of such commission being given as required by the 67th rule of equity practice in the circuit courts of the United States.

(Signed) MOSES HALLETT,
District Judge.

Endorsed : No. 124. Circuit court U. S. Hare & Pugh, trustees, *vs.* Fairmount Gold and Silver Mining Company *et als.* Order granting leave to complainants to examine, by depositions, Thackara and others. Filed June 14, A. D. 1878. Signed Edward F. Bishop, clerk. By Henry Sparnick, dep'ty.

122 *Dedimus Potestatum, U. S. Circuit Court, Colo.*

The United States of America.

UNITED STATES OF AMERICA, } *ss :*
District of Colorado, }

The President of the United States of America to Charles P. Clarke, Esq., a commissioner residing at Philadelphia, in the county of ———, and State of Pennsylvania, Greeting :

Whereas, it has been represented that Jonathan H. Pugh, Thos. Hare, Jacob S. Fish, Alfred Smith, John Russell, Wm. N. Ashmen, and T. J. Clinger, are material witnesses in a certain cause now pending in the circuit court of the United States for the district of Colorado, wherein Thomas Hare and Jonathan H. Pugh, trustees, are complainants, and the Fairmount Gold and Silver Mining Company *et al.* are defendants, and that the said witnesses reside at ——— aforesaid, without the said district of Colorado, and that their personal attendance cannot be procured at the trial of the said cause.

Now, know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested, with full power and authority as commissioner, to examine the said witnesses, and you are therefore authorized and required to cause the said witnesses to come before you, at such times and place as you may therefore designate and appoint, and diligently to examine the said witnesses on the oath or affirmation of the said witness by you first duly in that behalf administered, and faithfully to take the deposition of the said witnesses upon all interrogatories and cross-interrogatories attached to these presents, on the part of the said complainant, and none other; and the same, when thus taken, together with this commission and the said interrogatories, to certfy into our said district court, in a sealed envelope, with the least possible delay.

Witness, the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in the district aforesaid, this 15th day of July, A. D. 1878, and of the Independence of the United States the 103d year.

(Signed) EDWARD F. BISHOP, *Clerk.*

Fees before commissioner: Depositions and meetings, $128; paid by Thomas Hare and Jonathan H. Pugh, trustees.

122½ *Instructions as to the Mode of Taking, Certifying, and Returning Depositions.*

Caption of the Deposition.

The deposition of ———, of the county of ——— and State [or Territory] of ———, a witness of lawful age, produced, sworn, and examined, upon his corporal oath, on the —— day of ———, A. D. 187—, at the office [or house] of ———, in the town [or city] of ———, in the county of ——— and State [or Territory] aforesaid, by me, ———, a commissioner [or by us, if more than one commissioner, inserting all the names of the commissioners] duly appointed by a *dedimus potestatum*, issued out of the clerk's office of the circuit court of the United States for the district of Colorado, bearing *teste* in the name of the Chief Justice of the United States, and the seal of said court affixed thereto, and to me [or us, if more than one,] directed as such commissioner [or commissioners] for the examination of the said ——— witness— in a certain suit and matter in controversy, now pending and undetermined in the said circuit court, wherein ——— is plaintiff, and ——— is defendant, [insert the names of the parties litigant,] in behalf of the said ———, [plaintiff or defendant, as the case may be,] as well as on the cross-interrogatories of the ——— as upon the interrogatories of the ———, which were attached to the said commission, and upon none others, the said ——— being first duly sworn by me [or by ———, one of the said commissioners, if more than one,] as a witness in the said cause previous to the commencement of his examination to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy, between the said plaintiff and defendant, so far as — he — shall be interrogated, testified, and deposed, as follows:

Interrogatory First. [Here insert the first interrogatory in full.]

Answer. [Here insert the answer] and so on successively, in the order in which the interrogatories may be propounded and answered. Then follow the "cross-interrogatories [if any] and answers thereto by the witness on the part of the defendant," [or plaintiff, as the case may be.] Here again write down "cross-interrogatories and answers," successively, in the order aforesaid.

After the deposition is taken, the interrogatories and answers should be read over to the witness, and if he assents to the truth of the answers as written down, the witness will then sign his name to the bottom of his deposition, and swear to the truth of it before the commissioner.

Certificate.

[The commissioner should then certify as to the time, place, and manner of taking deposition, as follows:

"I, ———, of the county of ——— and State [or Territory] of ———, a commissioner duly appointed to take the deposition of the said ———, a witness [or witnesses] whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said ———, as a witness in the said suit between the said ———, as plaintiff, and ———, as defendant, he was duly sworn by me, [or by ———, one of said commissioners, if more than one,] to testify the truth in relation to the matters in controversy between the said parties, so far as he should be interrogated concerning the same; that the said depositions were taken by ———, and reduced to writing by ———, [naming the person,] at my office, [or at the house of ———,] in the city [or town] of ———, in the county of ——— and State [or Territory] of ———, on the ——— day of ———, A. D. 187—; and that after said deposition was taken by me [or us] as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness [or witnesses], and that thereupon the same was signed and sworn to by the said deponent, ———, [naming him or them,] before me [or us], at the place and on the day and year last aforesaid.

(Signed) "———, *Commissioner.*"

[The foregoing certificate of commissioner should be at the foot or bottom of the deposition, immediately following the deposition of the witness, and should be followed by a certificate from the proper court or officer of the State, showing official character and authority of the commissioner.]

The commissioner should then attach the said depositions to this commission and interrogatories, and also the exhibits, if any, properly marked or lettered as "Exhibit A," etc., and enclose the whole in a suitable wrapper or envelope, and then seal up the same securely with three seals, writing his name traversely across the middle seal or fold.

The commissioner will also endorse traversely across one end of the package thus sealed up, the names of the parties to this suit, and address by mail to the proper address of the clerk issuing the commission, as follows, to wit:

In the Circuit Court U. S. for the District of Colorado.

A. B., Plaintiff, *vs.* C. D., Defendant.

Deposition of witness, taken on the part of the plaintiff (or defendant.)

To EDWARD F. BISHOP, Esq.,
Clerk of the Circuit Court of the United States,
Denver, Colorado.

Neither of the parties to the suit, or their attorneys or agents, or any person at all interested in the event of the suit are permitted to draw, write, or dictate any part of the deposition, required to be taken as aforesaid.

To enforce attendance of witnesses. (See U. S. Revised Statutes, § 868, 869, 870.)

One caption will answer for the deposition of several witnesses, where they are all taken at the same time and place, to be read as evidence in the same suit, by so modifying the form above given as to be applicable to the number of witnesses examined.

Should an adjournment be necessary before the depositions are all completed, the commissioner will note the same.

Care should be taken to attach such deposition, commission, interrogatories, answers, and exhibits firmly together, by means of tape or ribbon, and using wax, wafers, or eyelets when necessary.

The commissioner will note the amount of his fees, and whether paid or unpaid.

123 UNITED STATES OF AMERICA, } *sct.:*
State of Colorado, }

In the United States Circuit Court for the District of Colorado.

THOMAS HARE and JONATHAN H. PUGH, Trustees, &c., Complainants,
against
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY, and G. B. REED, *et al.*, Defendants.

The depositions of Jonathan H. Pugh, Thomas Hare, Jacob S. Fish, Alfred Smith, John Russell, William N. Ashman, and T. J. Clinger, of the county of Philadelphia and State of Pennsylvania, witnesses of lawful age, produced, sworn, and examined upon their

corporal oaths, on the 2d, 3d, 6th, 7th, 8th, 10th, 12th, 14th, 15th, 16th, 17th, 19th, 20th, 23d, and 27th days of August, and upon the 3d day of September, A. D. 1878, at No. 501 Chestnut street, in the city of Philadelphia, in the county of Philadelphia, and State of of Pennsylvania aforesaid, by me, C. P. Clarke, a commissioner duly appointed by a *dedimus potestatum*, issued out of the clerk's office of the circuit court of the United States, for the district of Colorado, bearing *teste* in the name of the Chief Justice of the United States, and the seal of said court affixed thereto, and to me directed as such commissioner for the examination of the
124 said Jonathan H. Pugh, Thomas Hare, Jacob S. Fish, Alfred Smith, John Russell, William N. Ashman, and T. J. Clinger, witnesses in a certain suit and matter in controversy, now pending and undetermined in the said circuit court, wherein Thomas Hare and Jonathan H. Pugh, trustees, are complainants, and "The Fairmount Gold and Silver Mining Company and G. B. Reed are defendants, in behalf of the said complainants, as well as on the cross-interrogatories of the defendants as upon the interrogatories of the complainants, which were attached to said commission, and upon none others, the said witnesses being first duly sworn by me as witnesses in the said cause previous to the commencement of the examination to testify the truth, as well on the part of the plaintiffs as the defendants, in relation to the matter in controversy between the said plaintiffs and defendants, so far as they shall be interrogated, testified and deposed as follows:

Deposition of Jonathan H. Pugh.

AUGUST 2D, 1878, 11 A. M.

Present: The Commissioner and Jonathan H. Pugh.

Examination of JONATHAN H. PUGH:

Interrogatory first. What is your name, age, occupation, and residence?

Answer. Jonathan H. Pugh; past 55; I am in no business; residence 1345 N. 12th street.

Interrogatory second. How far from Denver, Colorado, do you reside?

125 Ans. About two thousand miles.

Interrogatory third. Have you the possession of the bond set up in the bill and amended bill of complainants for thirty-four thousand dollars, to be discharged by the payment of seventeen thousand dollars interest, &c., dated 22d day of August, 1870; if so, file the same with your deposition, and mark it so as to identify it?

Ans. I have the bond in my possession as one of the trustees in connection with Thomas Hare the other trustee, it is dated August 22d, 1870, and I now file it with the commissioner, and mark it with my initials, "J. H. P," for identification, and the commissioner marks it Exhibit "A," C. P. C., U. S. Commissioner.

Interrogatory fourth. If you have the mortgage executed by The Fairmount Gold and Silver Mining Company to Thomas Hare and Jonathan H. Pugh, trustees, dated 22d day of August, 1870, to secure the payment of seventeen thousand dollars' bond and interest, please file the same in your depositions and identify it by some mark?

Ans. I have the mortgage executed by "The Fairmount Gold and Silver Mining Company" to Thomas Hare and Jonathan H. Pugh, of date August 22d, 1870, and I now file it with the commissioner, and mark it with my initials for identification, "J. H. P," (and the commissioner marked it Exhibit "B," C. P. C., U. S. Commisssioner.)

Interrogatory fifth. Are, or are not, said bond and mortgage the same identical bond and mortgage set up and referred to in
126 the original and amended bill of complainants in this suit?

Ans. They are.

Interrogatory sixth. State whatever you may know as to what debts of said "Fairmount Gold and Silver Mining Company" were secured or intended to be secured by the parties at the time the bond and mortgage were executed; please be explicit in giving the names of the creditors and amount of the debts secured by the bond and mortgage; file list of the claims, showing names, dates, and amounts; mark it for identification as part of your depositions.

Ans. I now file with the commissioner a list showing what debts of the "Fairmount Gold and Silver Mining Company" were secured or intended to be secured by the bond and mortgage at the time the bond and mortgage were executed; on the list now filed with the commissioner the names of the creditors, the dates, and amounts of the debts secured by the bond and mortgage appear; I mark this list with my initials, "J. H. P.," for identification, to be taken as a part of my deposition, and is taken from the books of the company, which are here. (And the commissioner marked it Exhibit "C," C. P. C., U. S. Commissioner.)

Interrogatory seven. If you give names, dates, and amounts in answer to the last question, then give your knowledge as to the correctness of the same, and tell how you know that said debts were embraced in, covered by, and intended to be secured by the seventeen thousand dollar bond and mortgage.

127 Ans. I have knowledge as to the correctness of the names, dates, and amounts contained in Exhibit "C," which is part of my answer to the last question; Exhibit "C" is made from the books of the company, and is a correct transcript of the books of the company; I know that the said debts are embraced in, covered by, and intended to be secured by the seventeen thousand bond and mortgage, because I was present at the meeting of the stockholders of the company, held June 16th, 1868, when the bond and mortgage were authorized to be created for the security of indebtedness of the company prior to the date of the bond and mortgage, and which indebtedness was for borrowed money; this more fully appears in

an abstract of the legislation of the meeting of the stockholders and directors, and which I now hand to the commissioner, and mark it with my initials, "J. H. P.," for identification, and to be taken as part of my deposition, and made from the minute book of the company, which is now here; at the time of the creation of the bond and mortgage I was a stockholder and director of the company, and the bond and mortgage was created for the security of the then existing indebtedness of the company for borrowed money to various parties, and myself and Thomas Hare were elected trustees to carry out the intention of the creation of the bond and mortgage. (Said abstract marked by the commissioner Exhibit "D," C. P. C., U. S. Commissioner.)

Interrogatory eight. If any debts were secured by said bond
128 and mortgage, created after the date of said mortgage, name
the parties and give dates and amounts and your means of
knowing.

Ans. There were no debts secured by the bond and mortgage created after the date of said mortgage, and my means of knowing this are that at the time that the bond and mortgage were created I was a stockholder and director of the company and had been such without interruption up to the present time, and am familiar with the legislation of the board of directors of the company and the legislation of the stockholders.

Interrogatory ninth. In your answer to sixth interrogatory do you or do you not mean to say that no other debts were secured by the bond and mortgage than those named by you in your answer to the sixth interrogatory?

Ans. I mean to say there were no other debts secured by the bond and mortgage than those named in my answer to the sixth interrogatory.

Interrogatory tenth. State whatever you may know as to those debts created by the "Fairmount Gold and Silver Mining Company" subsequent to the date of the bond and mortgage aforesaid being secured or intended to be secured by the said bond and mortgage and your means of knowing.

Ans. There was no debts created by the said Fairmount Gold
and Silver Mining Company subsequent to the date of the bond
and mortgage which were secured or inteded to be secured by said
bond and mortgage, and my means of knowing are that I have been
without interruption a stockholder and director of the com-
129 pany since the date of said mortgage, to wit, August 22,
1870, and prior to said date. I am at present a stockholder,
bondholder, and director of the company, and am familiar with the
legislation of the board of directors of the company and the legisla-
tion of the stockholders.

Interrogatory eleventh. If you have the possession of the notes executed by said "Fairmount Gold and Silver Mining Company" which were delivered to the payees or the creditors of said company, and which notes were covered and secured by the aforesaid bond and mortgage, you please file them with your depositions and give a list of them showing the names, date, and amounts so marked as to be identified as part of your deposition.

Ans. I have in my possession as trustee some of the notes executed by the Fairmount Gold and Silver Mining Company which were delivered to the payees or creditors of the company, and which were covered and secured by the aforesaid bond and mortgage, I now file with the commissioner, and give a list of them, showing the names, dates, and amounts, and mark it with my initials, "J. H. P.," for identification, and to be taken as a part of my deposition (and the commissioner marked it Exhibit "E," C. P. C., U. S. Commissioner.)

Interrogatory twelfth. If you know the amount of indebtedness of the company to me, John W. Thackara, you will please state the amount, when and how created, and if any note or notes were executed and delivered to him, then give the dates and amounts
130 of the same, and explain the same fully; and, if paid, how, when, and by whom; were they sued upon; if so, when, where, and by whom?

Ans. I know the amount of indebtedness of the company to one John W. Thackara, and now file with the commissioner a list showing the amount and dates of the same, and mark it with my initials, "J. H. P.," for identification, and is taken from the books of the company. (The commissioner marked it Exhibit "F," C. P. C., U. S. Commissioner.) Two of the notes specified in this exhibit, viz., note Dec. 31, 1871, for ten thousand dollars, and note April 17, 1872, for one thousand seven hundred and eighty-nine and $\frac{50}{100}$ dollars, are notes given by the company to John W. Thackara for back salary, and to be paid when the profits of the company would guarantee such payment; also, two of the notes specified in this exhibit is note April 3d, 1872, for thirty dollars, and note April 3d, 1872, for twenty dollars, are notes given by the company to John W. Thackara for fifty per centum of the stock of the company which he purchased from the company, and are known as drawback notes, and to be paid by the company out of the first profits; there has been no profits realized by the company since its organization. The indebtedness was created by the execution and delivery of the notes mentioned in Exhibit "F" to him, and were created under and by virtue of the legislation of the company, abstracts of which legislation I now file with the commissioner, and mark it with my initials, J. H. P., for identification, and to be taken as part
131 of my deposition, and is taken from the minute book of the company, which I have present. (The commissioner marked it Exhibit "G," C. P. C., U. S. Commissioner.) The notes have not been paid, but were sued upon by John W. Thackara on the 22d day of March, 1873, in the district court of the second judicial district of the Territory of Colorado, in an action which he brought against the Fairmount Gold and Silver Mining Company.

Interrogatory thirteen. State whatever you may know as to the indebtedness of said "Fairmount Gold and Silver Mining Company" to one Abram C. Brown; when and how created; when and how paid; if paid, to whom Brown assigned said indebtedness; and, if sued upon, by whom, when, and what court; tell all you may know about the same, and how you know it?

Ans. I know the indebtedness of Fairmount Gold and Silver Mining Company to Abram C. Brown, and I now file with the commissioner a list showing the said indebtedness, and mark it with my initials, "J. H. P.," for identification, and is taken from the books of the company. (The commissioner marked it Exhibit "H," C. P. C., U. S. Commissioner.) Five of the notes specified in this exhibit, viz., note March 2d, 1869, to Abram C. Brown for two hundred and fifty dollars; note August 5, 1868, to Abram C. Brown for three hundred and thirty-three and $\frac{33}{100}$ dollars; note July 6, 1869, to Abram C. Brown for one hundred and eighty-three and $\frac{33}{100}$ dollars; note October 9th, 1869, to Abram C. Brown for six 132 hundred and eighty dollars; ote March 31st, 1870, to Abram C. Brown for three hundred and fifty dollars and $\frac{69}{100}$ are notes given by the company to Abram C. Brown for borrowed money. These notes are secured by bond and mortgage, also five of the notes specified in this exhibit, viz., note April 30, 1872, to Abram C. Brown for sixty dollars; note May 24, 1872, to Abram C. Brown for twenty-five dollars; note July 2, 1872, to Abram C. Brown for one hundred and ninety dollars; note August 15, 1872, to Abram C. Brown for five hundred dollars; note August 28, 1872, to Abram C. Brown for two hundred and fifty dollars are notes given by the company to Abram C. Brown for fifty per centum of the stock of the company which he purchased from the company, are known as drawback notes, and to be paid by the company from the first profits. There has been no profits realized by the company since its organization. The debts were created at the times indicated in Exhibit H, and were created under and by virtue of the legislation of the company, as more fully appears in Exhibit D in my answer to my seventh interrogatory and in exhibit G in answer to the twelfth interrogatary.

The debts have not been paid, and were assigned by Abram C. Brown to John W. Thackara, these evidences of indebtedness have been sued upon by John W. Thackara in an action brought against the "The Fairmount Gold and Silver Mining Company" on 133 the 22d day of March, 1873, in the district court of the second judicial district of the Territory of Colorado. My knowledge of this is that, at the time mentioned, to wit, the 22d of March, 1873, I was a director of the Fairmount Gold and Silver Mining Company, and familiar with the business of the company.

Interrogatory fourteenth. If you know of any indebtedness on the part of said company to J. P. Harker, then tell all about it, the amount thereof, when created, how created, how settled, by note or otherwise, if assigned by Harker, to whom, if suit was brought by whom, and when, and explain the whole matter and your means of knowing?

Ans. I know of the indebtedness of "The Fairmount Gold and Silver Mining Company" to John P. Harker; it amounts to the sum of twenty dollars; it was created May 17, 1869, under and by virtue of the legislation of the company, as more fully appears in Exhibit "D," and in answer to the seventh interrogatory, and the note was given by the company for it, which note was assigned by John P. Harker to John W. Thackara, and made part of the foundation of the suit of the said John W. Thackara against The Fairmount Gold and Silver Mining Company, on the 22d day of March, 1873, I was a director of the said company at that time, and familiar with its business. This is taken from the books of the company, which are here.

Interrogatory fifteenth. If you have any knowledge of any indebtedness of said company to one Swain Thackara, then tell all you may know about it, giving dates, amount, how and when 134 created, if transferred, to whom, if sued on, by whom, and where?

Ans. I know of the indebtedness of the Fairmount Gold and Silver Mining Company to Swain Thackara; it amounts to one hundred dollars, and was created April 12, 1869, under and by virtue of the legislation of the company, as more fully appears in Exhibit D, in my answer to the seventh interrogatory, and a note given by the company for it at the time; the note was transferred by Swain Thackara to John W. Thackara, and was made part of a foundation of a suit of John W. Thackara against the Fairmount Gold and Silver Mining Company on the 22d day of March, 1873; this is taken from the books of the company, which I have here.

Interrogatory sixteenth. If you have any knowledge as to whether any of the debts due from said company to John W. Thackara, Abram C. Brown, J. P. Harker, and Swain Thackara, above described and spoken of, were secured by said bond and mortgage; you will please describe fully and clearly which of them, giving names, dates, and amounts, are thus secured, and which were not secured, and your means of knowing?

Ans. I have knowledge as to the debts due from the company which were secured by the bond and mortgage, and I will now describe them by handing to the commissioner a list marked Exhibit "I," which is taken from the books of the company, and which set them out clearly and fully, giving names, dates, and amounts of 135 those secured; I also file with the commissioner a list of those not secured by the mortgage, giving dates, and the amounts of the same, and mark it with my initials, "J. H. P.," and make it a part of my deposition. This is taken from the books of the company, which I have present.

(The commissioner marks them Exhibits "I" and "K," C. P. C., U. S. Commissioner.)

My means of knowledge arises from the fact that I was at the time of the creation of the mortgage, to wit, on August 22d, 1870, and have been ever since, and now am a stockholder and director of the company, and familiar with the legislation of the board of directors of the company, and the legislation of the stockholders.

Interrogatory seventeen. State whatever you may know as to the knowledge of said John W. Thackara, that the bond and mortgage aforesaid were executed, and for what purpose they were executed; what debts were or were not secured by them, and tell all you may know about it, and your means of knowing, as well as Thackara's means of knowing.

Ans. Early in March, 1871, John W. Thackara being in Philadelphia, having returned from Colorado, said in a conversation with me, that he had learned of the existence of a bond and mortgage which was created by the company, and which had been recorded at Georgetown, Clear Creek county, Colorado, before he left Colorado, amounting to seventeen thousand dollars, or thereabouts; he asked me the
object of it, when he was informed by the president of the com-
136 pany who was present at the conversation, to wit, Mr. Charles
H. Brown, that the purposes and object of the same were to secure moneys which were borrowed by the company from various parties anterior to the date of the said bond and mortgage, and which parties held the evidences of indebtedness of the company for said borrowed money. The bond and mortgage were created for no other purpose, than as a security for money borrowed by the company from various parties prior to the date of said mortgage. My means of knowing that are that I was a stockholder and director of the company, and familiar with its legislation and business. John W. Thackara's means of knowing that the bond and mortgage were created for the purpose just stated arise in this way: He had frequent conversations with me and the president of the company concerning the same, as well as other directors, and was present at the meetings of the directors of the company and the stockholders. I frequently saw him at those meetings. I saw him examining the books of the company at the store and house of the president. His official connection with the company at that time was that of general agent.

Interrogatory eighteen. State whatever you may know as to whether the indebtedness of said company to the sundry creditors named in the answer and list filed to sixth interrogatory is *bona fide* or not, or due and owing by the company at the time of the commencement of this suit and since.

137 Ans. The indebtedness of the company to sundry creditors
named in my answer to the sixth interrogatory, and as specified from the list filed therein, and marked Exhibit "C," is *bona fide*, and was due and owing by the company at the time of the commencement of this suit, and is still.

Interrogatory nineteen. Will please give a list of the debts due for said company, which this suit was brought, which are *bona fide* due, owing and unpaid, and secured by the mortgage aforesaid, and also your means of knowing.

Ans. I now hand to the commissioner a list, showing the debts due from said company, for which this suit was brought, and mark it with my initials, J. H. P.—(the commissioner marks it Exhibit "L," C. P. C., U. S. Commissioner,)—and make it part of my deposition. It is identical with Exhibit C, which is part of my answer to the sixth interrogatory. This is taken from the books of the company, which are now present. The debts are *bona fide* due, and owing, and unpaid, and are secured by the mortgage, and my means of knowledge are, that I know of the creation of the bond and mortgage for the purposes of such security. I was present at a meeting of the stockholders when it was done, and am one of the trustees for the execution of said bond and mortgage, according to the intention of its creation, as more fully appears in Exhibit D, which I have marked and which I have offered as a part of my deposition in my answer to the seventh interrogatory.

138 Interrogatory twenty. Were or were not any or all of the notes of said company, upon which John W. Thackara brought suit in Clear Creek county, Colorado, secured by said bond and mortgage; if so, state which were and which were not secured; be explicit, and give source of your knowledge?

Ans. Some of the notes of said company upon which John W. Thackara brought suit in Clear Creek county, Colorado, were secured by bond and mortgage, some were not; I now hand to the commissioner a list showing which were secured by the bond and mortgage, and marked it with my initials J. H. P., for identification; (the commissioner marks it Exhibit "M," C. P. C., U. S. Commissioner,) and to be made a part of my deposition, this is taken from the books of the company, which are here for examination; I also hand to the commissioner a list showing which debts were not secured by the bond and mortgage, and which formed in part the foundation of the suit of John W. Thackara against the company, I mark this list Exhibit "N" for identification, and offer the same as part of my deposition; (the commissioner marks it Exhibit "N," C. P. C., U. S. Commissioner); this is also taken from the books of the company, which are present; my source of knowledge is that I was a stockholder and director of the company at the time, and since these several evidences of indebtedness were created, and am such at the present time, and am familiar with the business and legislation of the company.

139 Interrogatory twenty-first. At whose instance or by whose knowledge and request, was this suit brought?

Ans. On my own motion as a bondholder, and at the request of other bondholders whose debts are secured by the bond and mortgage, myself and Thomas Hare are named as trustees *myself and Thomas Hare are named as trustees* for the execution of the intent of the mortgage.

Interrogatory twenty-second. State whatever you may know as to the indebtedness of said company to Thomas Hare and Jonathan H. Pugh, how created, when created, if settled by note or otherwise, whether the same is now just, due, and unpaid, in whole or in part; explain fully all you know about said indebtedness?

Ans. I know of the indebtedness of said company to myself and Thomas Hare; I now hand to the commissioner a list of said indebtedness due me, and mark it with my initials "J. H. P." for identification, and desire the same to be taken as a part of my deposition; (the commissioner marks Exhibit "O," C. P. C., U. S. Commissioner); these debts were created at the dates mentioned therein, and under and by virtue of the legislation of the company, as more fully appears in Exhibit "D" in my answer to the seventh interrogatory, the debts were settled by notes which appear on the list filed with this answer; they are just, due, and unpaid in
140 whole, and I have never received any part of the same.

Without concluding the examination of the witness, the meeting adjourned to August 3d, at 11 o'clock a. m.

AUGUST 3*d*, 11 A. M.

Present the Commissioner, Jonathan H. Pugh.

The Examination of Mr. Pugh Resumed.

Interrogatory twenty-third. Have Hare and Pugh, as trustees or individually, brought any other suit, at law or in equity, in Colorado or other places, on the indebtedness of the company, secured by said bond and mortgage; if so, when and where?

Answer. I have commenced no suit, either at law or in equity; neither has my co-trustee, Mr. Hare.

Interrogatory twenty-four. What means of knowledge had John W. Thackara as to the execution of the bond and mortgage aforesaid, and the purpose and object of the same; his opportunities of knowing, his access to the books and proceedings of the company, its meetings, and what official capacity did he occupy to the company; be explicit, and tell all about it?

Ans. I have fully answered this interrogatory in my answer to the seventeenth interrogatory; but I may say, in addition, that after March, 1871, John W. Thackara and myself and other di-
141 rectors of the company had frequent conversations as to the execution of the bond and mortgage, and the purposes and object of the same; his opportunities for knowing were very complete, as in addition to this he had full and free access to the books of the company, and frequently examined them.

Interrogatory twenty-fifth. If you know anything else material to the parties herein touching this case you will please state it, and give your means of information and knowledge.

Ans. I know nothing further.

Interrogatory twenty-sixth. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. On Exhibit "C," filed with my answer to the sixth interrogatory, there appears a debt, as follows: No. 95, John R. Brownholtz, December the second, 1870, for sixty-six and $\frac{66}{100}$ dollars; this note was given by the company, as its date indicates, after the creation of the mortgage, the note was given by the company to John R. Brownholtz for money which the company borrowed from him prior to the execution of the bond and mortgage, and was intended to be secured by the said bond and mortgage. I now file with the commissioner a list of the indebtedness of the
142 company intended to be secured by the bond and mortgage,
and mark it with my initials, "J. H. P.," for identification, and offered as part of my testimony. (The commissioner marks it Exhibit "P.," C. P. C., U. S. Commissioner.) This Exhibit "P" I divide into three classes, as follows:

First. List of notes controlled by the trustees, which are intended to be secured by the bond and mortgage.

Second. List of notes not controlled by the trustees, but which are secured by the bond and mortgage.

Third. List of debts intended to be secured by the bond and mortgage, but for which no notes were issued by the company, this exhibit is identical with Exhibit "C" in my answer to the sixth direct-interrogatory, with the exception that this exhibit, is divided into classes, as I have said. This is taken from the books of the company. I now file with the commissioner a paper, and mark it with my initials, "J. H. P," for identification, and to be taken as a part of my deposition. (The commissioner marks it Exhibit "Q," C. P. C., U. S. Commissioner.) It is the agreement between "The Fairmount Gold and Silver Mining Company and Thomas Hare and myself, in trust for the uses and purposes therein set forth

Cross-Interrogatories and Answers thereto by the witness, Jonathan H. Pugh, on the part of Complainants.

Cross-Interrogatory first. If in answer to the fifth direct-
143 interrogatory you say that the bond and mortgage, testified
to by you, are the same mentioned in the original and amended bills of complaint herein, state how you know they are the same, and how you know what bond and mortgage are described in said original and amended bills?

Answer. The bond and mortgage testified to by me in my answer to the fifth direct-interrogatory are the same as are mentioned in the original and amended bills herein. My knowledge of the fact that they are the same is that they are the same, is that I was present at a meeting held on the sixteenth day of June, A. D. 1868, of the stockholders, when the bond and mortgage was ordered to be created; that I was present at a meeting of the board of directors, held on the nineteenth of August, 1870, subsequent thereto, at which a bond and mortgage were approved, and myself and Thomas Hare named as trustees for the purpose of carrying out the intention of the creation of said bond and mortgage, as more fully appears in Exhibit "Q," which I have marked with my initials, "J. H. P," and identified by the commissioner with his initials in my answer to the twenty-sixth interrogatory.

Cross-Interrogatory second. If in answer to the sixth direct interrogatory you say you know what debts were secured by "The Fairmount Gold and Silver Mining Company," by the bond and
144 mortgage state explicity what each and every of such debts were,
and give the dates that each was contracted. The amount of the same; state what, if any evidence of indebtedness, such creditors had, and attach a copy of such instruments to your answers; also state how you know such indebtedness, and each of them, were secured by such bond and mortgage, and if you were furnished as trustees at the time of the execution of such bond and mortgage with a schedule or list of the indebtedness, secured by such bond and mortgage, attach a copy hereto as an exhibit to your answer; and, if in answer to the same interrogatory, you attempt to state what indebtedness was *intended* to be secured by such bond and mortgage, state fully how you know, and your means of information; state the same fully?

Ans. In my answer to the sixth direct interrogatory, I have filed with the commissioner a list showing all the debts that were intended to be secured by the bond and mortgage for borrowed money; I have marked this list Exhibit "C," and also with my initials, "J. H. P.," (which paper, also in evidence, and marked by the commissioner, and identified by him,) as part of my answer to the sixth direct interrogatory, and it states explicitly what each and every of such debts were, and the date that each was contracted,
and the amount of the same. In my answer to the eleventh
145 interrogatory, I filed with the commissioner a list and marked
it with my initials, J. P. H., (and marked by the commissioner Exhibit "E;") it is a list showing the evidences of the indebtedness which the creditors of the company had for the moneys which had been borrowed by the company from the various parties, I know that each of them were secured by the bond and mortgage, and my means of knowledge is that I was present at a meeting of the board of directors of the company when the bond and mortgage was created for the security of then existing indebtedness of the company for money which it had borrowed from various parties; I was furnished as trustee at the time of the execution of such bond and mortgage with a list of the indebtedness secured by such bond and mortgage, and which list is identical with Exhibit "C," which is part of my answer to the sixth direct interrogatory; that list I have already marked with my initials, "J. H. P;" my knowledge as to what indebtedness was intended to be secured by the bond and mortgage arises in this way;

that I was present at a meeting of the stockholders when the bond and mortgage was authorized to be created subsequently at a meeting of the directors, of which I was one, at which said bond and mortgage was created, and the object of its creation was for 146 the security of pre-existing indebtedness of the company for borrowed money.

Cross-interrogatory third. If in answer to the eighth direct interrogatory you say that the said bond and mortgage, *that said and bond and mortgage*, was made to secure debts thereafter created, state how you know the same, and mention each and every of such debts, and what action was taken by the "Fairmount Gold and Silver Mining Company" to indicate that such bond or mortgage were made to secure debts to be created thereafter.

Ans. In my answer to the eighth direct interrogatory, I testify that there were no debts secured by the bond and mortgage which were created after the date of such bond and mortgage, to wit, August 22d, 1870, and my means of knowing this are that at the time that the bond and mortgage were created I was a stockholder and director of the company, and have been such without interruption up to the present time, and am familiar with the legislation of the board of directors of the company and the legislation of the stockholders.

Cross-interrogatory fourth. If in answer to direct interrogatories you give a list of all the indebtedness in full that such bond and mortgage were given to secure, and say that such indebtedness was evidenced by notes or any written acknowledgment, state how many and which of said notes or evidences of indebtedness 147 were paid in any manner by "The Fairmount Gold and Silver Mining Company," or exchange for the stock of said company, and also why such notes or evidences of indebtedness were not cancelled, and how the[y] came again to be issued; also state who now are or claim to be the owners of each and every of such notes or evidences of indebtedness, and how they came in the possion of such person.

Ans. None of the notes or evidences of indebtedness were paid by "The Fairmount Gold and Silver Mining Company," nor by the trustees; some of the notes secured by the bond and mortgage were exchanged by the holders of the same into stock of the company conditionally, under and by virtue of the legislation of the board of directors of the company, an abstract of which legislation, taken from the minute book of the company, I now make a part of my answer and mark it with my initials, "J. H. P," for identification, (the commissioner marks it Exhibit "R," C. P. C., U. S. commissioner,) and ask it to be made part of my testimony; the notes were not cancelled, because they were exchanged or converted conditionally, as more fully appears in Exhibit "R;" the notes were never reissued, and the notes appear in Exhibit "E" in my answer to eleventh direct interrogatory, are the original notes issued by the company to the parties named therein for money borrowed

148 by the company from said parties; the parties named in the notes or evidences of indebtedness claim to be and are the owners of them under the provisions of the legislation of the company, as more fully appears in Exhibit "R" in my answer to this cross-interrogatory, and demand their rights under the mortgage, and request that the trustees pursue and enforce such rights; myself and Thomas Hare, trustees, have possession of the notes, as more fully appears in Exhibit "E" in my answer to the eleventh direct interrogatory, for the purposes of this suit.

Cross-interrogatory five. If you say that any of the indebtedness of the "Fairmount Gold and Silver Mining Company" was taken up and satisfied either by exchange of the same for the stock of the company, or in any other manner, give a full and complete bill of all the debts so paid, either by stock or in any other manner, and a full and complete list of each and every debt of the said company not taken in and paid?

Ans. None of the indebtedness of the "Fairmount Gold and Silver Mining Company" was taken up and satisfied, either by the company or the trustees. In my answer to my fourth cross-interrogatory, I say that some of the notes of the company given to the various parties for borrowed money were exchanged or converted
149 into stock of the company upon condition that all holders of
such notes for borrowed money, would exchange, or convert the same into stock of the company; all holders did not exchange or convert, and those who did convert, claim a release from such exchange or conversion, as the condition of the legislation of the company was not complied with and have directed the commencement of this suit. I now hand to the commisioner a list of those debts for borrowed money, which were exchanged for the stock of the company and mark it with my initials, "J. H. P," for identification, (and the commissioner marks it Exhibit "S," C. P. C., U. S. Commissioner,) and offered as a part of my testimony.

I also hand to the commissioner a list of those debts for borrowed money which were not exchanged for stock of the company, and mark it with my initials, "J. H. P," for identification, (the commissioner marked [it] Exhibit "T," C. P. C., commissioner,) and ask to have it taken as part of my testimony.

This is taken from the books of the company.

(S'g'd) J. H. PUGH.

Sworn and subscribed to before me, this third day of August, A. D. 1878.

(S'g'd) CHAS. P. CLARKE,
U. S. Com'r.

The meeting adjourned to meet on Tuesday, Aug. 6th, 1878, next, at 11 o'clock a. m.

150 *Examination of Thomas Hare.*

August 6th, 1878.

Present: The Commissioner; Thomas Hare.

Examination of Thomas Hare:

Interrogatory First. What is your name, age, and occupation, and residence?

Ans. Thomas Hare; age, 62; tobacco merchant; residence, 524 Franklin St., Philadelphia.

Interrogatory second. How far from Denver, Colorado, do you reside?

Ans. Two thousand miles, less or more.

Interrogatory third. Have you the possession of the bonds set up in the bill and amended bill of complainants for thirty-four thousand dollars to be discharged by the payment of seventeen thousand dollars, interest, &c., and dated 22d August, 1870; if so, file the same with your deposition, and mark it so as to identify it?

Ans. I have the bond in my possession as one of the trustees in connection with Jonathan H. Pugh, the other trustee, which is dated August 22d, 1870, and I now file it with the commissioner, and identify it with my initials, "T. H.," which has already been marked by the commissioner Exhibit "A." 151

Interrogatory fourth. If you have the mortgage executed by "The Fairmount Gold and Silver Mining Company" to Thomas Hare and Jonathan H. Pugh, trustees, dated 22d August, 1870, to secure the payment of said seventeen thousand bond and interest, please file the same in your deposition, and identify it by some mark?

Ans. I have the mortgage executed by the "Fairmount Gold and Silver Mining Company" to Thomas Hare and Jonathan H. Pugh, of date August 22d, 1870, and I now file it with the commissioner, and mark it with my initials "T. H.," for identification.

(Paper already offered in evidence and marked by the commissioner Exhibit "B.")

Interrogatory fifth. Are or are not said bond and mortgage the same identical bond and mortgage set up and referred to in the original and amended bills of complainants in this suit?

Ans. To my certain knowledge, they are.

Interrogatory sixth. State whatever you may know as to what debts the said "Fairmount Gold and Silver Mining Company" were secured or intended to be secured by the parties at the time the bond and mortgage were executed; please be explicit in giving the names of the creditors and amount of the debts secured by the bond 152 and mortgage; file a list of the claims showing names, dates, and amounts; mark it for identification as part of your deposition?

Ans. I now file with the commissioner a list showing what debts of "The Fairmount Gold and Silver Mining Company" were secured or intended to be secured by the said bond and mortgage, at the time the same were executed. On the list which has been filed with the commissioner, names of the creditors, the dates and amounts of the debts secured by the bond and mortgage, appear. This list has already been marked by the commissioner, Exhibit "C," and I now identify it with my initials "T. H.," and I desire it to be taken as a part of your deposition, and it is taken from the books of the company, which are present.

Interrogatory seven. If you give names, dates, and amounts, in answer to the last question, then give your knowledge as to the correctness of the same and tell how you know that said debts were embraced in, covered by, and intended to be secured by the seventeen thousand dollar bond and mortgage?

Ans. I have certain knowledge as to the correctness of the names, dates, and amounts contained in Exhibit "C," which was referred to in answer to my last question and which is a part of it. Exhibit "C" is prepared from the books of the company, and is a correct transcript of the same; I know that the said debts are embraced in, covered by, and intended to be secured by the 153 seventeen thousand dollar bond and mortgage, because I was present at the meeting of the stockholders of the company, held June 16, 1868, when the bond and mortgage was authorized to be created for the security of sundry parties, who had loaned the company money, prior to the date of the bond and mortgage I desire to answer something further to this interrogatory. This bond and mortgage was intended to cover and secure borrowed money alone, which will more fully appear in the abstract of the legislation of the stockholders and directors, and which has already been marked by the commissioner Exhibit "D," and I now identify it with my initials "T. H.," and I desire to have it taken as part of my deposition; it was made from the minute books of the company, which are present; at the time of the creation of the bond and mortgage I was a stockholder and director of the company, and I know that the bond and mortgage was created for the security of the then existing indebtedness of the company for borrowed money only; I and Jonathan H. Pugh were chosen trustees to carry out the intention of the creation of the bond and mortgage.

Interrogatory eighth. If any debts were secured by said bond and mortgage *created after* the date of said mortgage, name the parties, and give dates and amounts, and your means of knowing.

154 Ans. I know that there were no debts secured or intended to be secured by the bond and mortgage created after the date of said mortgage. My means of knowing this are that at the time they were created I was a stockholder and director of the company, and as such participated in its legislation, and was entirely familiar with the same.

Interrogatory nine. In your answer to your sixth interrogatory, do you or do you not mean to say that no other debts were secured by the bond and mortgage than those named by you in your answer to the sixth interrogatory?

Ans. I mean to say there were no other debts secured by that bond and mortgage than those named in my answer to the sixth interrogatory.

Interrogatory ten. State whatever you may know as to those debts created by "The Fairmount Gold and Silver Mining Company" *subsequent* to the date of the bond and mortgage aforesaid being secured or intended to be secured by the said bond and mortgage and your means of knowing.

Ans. I know of no debts created by the Fairmount Gold and Silver Mining Company subsequent to the date of the bond and mortgage, which were secured or intended to be secured by said bond and mortgage, and my means of knowing are that I was a director and stockholder of the company up to the date of said mortgage, to wit, August 22d, 1870, and subsequently, and am familiar with the legislation of the company, both of the board of directors and stockholders.

155 Interrogatory eleven. If you have the possession of the notes, executed by said Fairmount Gold and Silver Mining Company, which were delivered to the payees or creditors of said company, and which notes were covered and secured by the aforesaid bond and mortgage you will please file them with your deposition, and give a list of them, showing the names, dates, and amounts so marked as to be identified as part of your deposition.

Ans. I have in my possession as trustee some of the notes of the Fairmount Gold and Silver Mining Company which were delivered to the payees or creditors of the company, and which notes were covered and secured by the aforesaid bond and mortgage. I now file with the commissioner and give a list of them, showing the names, dates, and amounts, and mark it with my initials, "T. H.," and which has already been marked by the commissioner Exhibit "E," and ask to have it taken as part of my deposition.

Interrogatory twelfth. If you know the amount of indebtedness of the company to one John W. Thackara you will please state the amount, when and how created, and if any note or notes were executed and delivered to him, then give the dates and amounts of the same and explain the same fully; and if paid, how and when, and by whom: were they sued upon; if so, when, where, and by whom?

Ans. Two of the notes, specified in this exhibit, namely,
156 note dated December 31st, 1871, for ten thousand dollars, and
note dated April 17th, 1872, for seventeen hundred and eighty-nine and $\frac{50}{100}$ dollars, are notes given by the company to John W. Thackara for *back salary*, and to be paid when the profits of the company would guarantee such payment; also two of the notes specified in exhibit marked "F" already by the commissioner, and which I now mark with my initials, "T. H.," for identification, namely, note April 3, 1872, for thirty dollars,

and note April 3d, 1872, for twenty dollars, are notes given by the company to John W. Thackara for fifty per centum of the stock of the company, which he purchased from the company, and are known as drawback notes, and to be paid by the company out of its first profits. No profits have ever been realized by the company since its organization. The indebtedness is created by the execution and delivery of the notes mentioned in Exhibit "F," and were created under and by virtue of the legislation of the company, abstracts of which legislation I now file with the commissioner, and which has already been marked by the commissioner Exhibit "G," and I now identify it with my initials, "T. H." Exhibit "F" and Exhibit "G" are taken from the books of the company now present, and I desire to have them taken as part of my deposition. These notes have not been paid, but were sued upon by John W. Thackara on the 22d day of March, 1873, in the district court 157 of the second judicial district of the Territory of Colorado in an action which he brought against the Fairmount Gold and Silver Mining Company.

Interrogatory thirteen. State whatever you may know as to the indebtedness of said Fairmount Gold and Silver Mining Company to one Abram C. Brown, when, and how created, when and how paid, if paid, to whom Brown assigned said indebtedness, and if sued upon, by whom, when, and in what court; tell all you may know about the same, and how you know it.

Ans. I know of the indebtedness of the Fairmount Gold and Silver Mining Company to Abram C. Brown, and I now hand to the commissioner a list, showing said indebtedness, already marked by him Exhibit "H," and which I now mark with my initials, "T. H," for identification. It was taken from the books of the company. Five of the notes specified in this Exhibit "H," namely, August, 5th, 1868, to Abram C. Brown, for two hundred and fifty dollars; note dated March 2d, 1869, to Abram C. Brown, for three hundred and thirty-three and $\frac{33}{100}$ dollars; note July 6, 1869, to Abram C. Brown, for one hundred and eighty-three and $\frac{33}{100}$ dollars; note October 9, 1869, to Abram C. Brown, for six hundred and eighty dollars; note dated March 31, 1870, to Abram Brown, for three hundred and fifty and $\frac{69}{100}$ dollars, are notes given by the company to Abram C. Brown for borrowed money. These notes are secured by the bond and mortgage. Five of the notes specified in this Exhibit 158 "H," namely, April 30, 1872, to Abram C. Brown, for sixty dollars; note May 24, 1872, to Abram C. Brown, for twenty-five dollars; note July 2, 1872, to Abram C. Brown, for one hundred and ninety dollars; note Aug. 15th, 1872, to Abram C. Brown, for five hundred dollars; note August 28, 1872, to Abram C. Brown, for two hundred and fifty dollars, are notes given by the company to Abram C. Brown for fifty per centum of the stock of the company which he purchased from the company, and known as drawback notes, and to be paid out of the first profits; no profits have been realized by the company since its organization; the bebts were created at the times indicated in the exhibit referred to, and were created under and by virtue of the legislation of the company as appears more fully in Exhibit "D" in my answer to the seventh interrogatory, and in Exhibit "G" in answer to the twelfth interrogatory; the debts have not been paid, and were assigned by Abram C. Brown to John W. Thackara; these evidences of indebtedness have been sued upon by John W. Thackara in his action brought against "The Fairmount Gold and Silver Mining Company on the 22d day of March, 1873, in the district court of the second judicial district of the Territory of Colorado; I know these facts from my official connection with the board of trustees, and my general knowledge of the familiarity of the business of the company; I was a director at this date.

159 Interrogatory fourteenth. If you know of any indebtedness on the part of said company to J. P. Harker, then tell all about it; the amount thereof, when created, how created, how settled, by note or otherwise; if assigned by Harker, to whom; if suit was brought, by whom, and when, and explain the whole matter and your means of knowing?

Ans. I know of the indebtedness of the Fairmount Gold and Silver Mining Company to John P. Harker; it amounts to the sum of twenty dollars, and was created May 17, 1869, by the legislation of the company, as more fully appears in Exhibit "D" in my answer to the seventh interrogatory; the note was given by the company, and was assigned by John P. Harker to John W. Thackara, and constituted a part of the foundation of his suit against the company, instituted 22d of March, 1873; I was a director of the company, and entirely familiar with the business at this time; these facts are taken from the books of the company, which are present.

Interrogatory fifteen. If you have any knowledge of any indebtedness of said company to one Swain Thackara, then tell all you may know about it, giving dates, amounts, how and when created; if transferred, to whom; if sued, by whom, and when?

Ans. I know of the indebtedness of the Fairmount Gold
160 and Silver Mining Company to Swain Thackara; it amounts to one hundred dollars, and was created April 12, 1869, by virtue of the legislation of the company, as more fully appears in Exhibit "D" in my answer to the seventh interrogatory, and a note given for the amount at the time; the said note was transferred by Swain Thackara to John W. Thackara, and constituted a part of the foundation of his suit against the Faimount Gold and Silver Mining Company, instituted the 22d day of March, 1873; these facts are taken from the minutes of the company.

Interrogatory sixteen. If you have any knowledge as to whether any of the debts due from said company to John W. Thackara, Abram C. Brown, J. P. Harker, and Swain Thackara, above described and spoken of, were secured by said bond and mortgage, you will please describe fully and clearly which of them, giving names, dates, and amounts *are thus secured*, and which were *not thus secured*, and your means of knowing.

Ans. I have knowledge as to the debts due from the company which were secured by the bond and mortgage, and will now specify the same by handing to the commissioner a list which has already been marked by him Exhibit "I," and I now mark it with my initials, "T. H.," for identification, and which is taken from the books of the company, which sets them out clearly and fully, 161 giving names, dates, and amounts of those thus secured; I also hand to the commissioner list of those *not* secured by the mortgage, already marked by the commissioner Exhibit "K," and which I now mark with my initials, "T. H.," for identification; this is taken from the books of the company; my means of knowing arises from the fact that I was at the time of the creation of the mortgage, August 22, 1870, and subsequently, a director and stockholder of the company, and familiar with all its legislation.

Interrogatory seventeen. State whatever you may know as to the knowledge of the said John W. Thackara, that the bond and mortgage aforesaid were executed, and for what purpose they were executed, what debts were or were not secured by them, and tell all you may know about it, and your means of knowing, as well as Thackara's means of knowing.

Ans. During the month of March, 1871, John W. Thackara being in Philadelphia, having returned from Colorado, said, in sundry conversations with me, at my store, and at meetings of the board of directors, that he had learned of the existence of mortgage created by the company, and which had been recorded in Georgetown, Clear Creek county, Colorado, before he left that Territory, amounted to seventeen thousand dollars, or thereabouts; he asked the object of it, and was informed by myself 162 and others who were present at the conversation, that the object of the same was to secure moneys which had been borrowed by the company from sundry parties anterior to the date of the said bond and mortgage, and which parties held the evidences of indebtedness of the company for said borrowed money. He was told that the bond and mortgage was created for no other purpose than as a security for moneys borrowed from various parties prior to its date. My means of knowing that are that I was a director of the company as well as a stockholder, and was present at all the interviews had with John W. Thackara, our general superintendent. John W. Thackara learned directly at the recorder's office at Georgetown that the mortgage was on record, which knowledge he conveyed to us as directors. He was present at all the meetings of the board, had access to the books, and learned everything that was necessary for him to know. He examined the books, and read the minutes of our post meetings and asked such questions, the answers to which would afford him any satisfaction. He had numberless interviews with the president at his store, with the members of the board individually as well as at their regular meetings. He was recognized at the times officially as entitled to those courtesies, he being our recognized general agent.

163 Without concluding the direct examination of the witness, the meeting adjourned to meet on Wednesday, Aug. 7th, at 11 o'clock a. m.

AUGUST *7th*, 1878, 11 o'clock a. m.

Present: The Commissioner, Thomas Hare.

Examination of Mr. Hare Resumed.

Interrogatory eighteen. State whatever you may know as to whether the indebtedness of said company to the sundry creditors named in the answer and list filed to the 6th interrogatory is *bona fide* or not, or due and owing by the company at the time of the commencement of this suit and since.

Ans. The indebtedness of the company to the sundry creditors named in my answer to the sixth interrogatory, and as specified upon the list handed to the commissioner, and already marked by him Exhibit "C," is *bona fide*, and were due and owing by the company at the time of the commencement of this suit, and is still.

Interrogatory nineteen. Will you please give a list of the debts due from said company, for which this suit was brought, which are *bona fide*, due, owing, and unpaid, and secured by the mortgage aforesaid, and also your means of knowing?

Ans. I now hand to the commissioners a list showing
164 debts due by said company, for which this suit was brought, and already marked by the commissioner Exhibit "L," and I now mark it with my initials for indentification, and is identical with Exhibit "C," which is already a part of my answer to the sixth interrogatory; this is taken from the books of the company; the debts are *bona fide*, due, and owing, and unpaid, and are secured by the mortgage, and my means of knowing are that I was present at the meeting when the bond and mortgage were authorized for the purposes of securing the claims of the creditors who had loaned the company money; I was one of the trustees for the executor of the said bond and mortgage, according to the intention of its creation; it is more fully set forth in Exhibit "D" in my answer to the seventh interrogatory.

Without concluding the examination of the witness the meeting adjourned to meet on Thursday, the 8th of August, 1878, at 11 o'clock a. m.

AUGUST *8th*, 1878, 11 a. m.

Present: The Commissioner, Thomas Hare.

Examination of Mr. Hare Resumed.

Interrogatory twenty. Were, or were not, any or all of the notes on said company upon which John W. Thackara brought suit
165 in Clear Creek county, Colorado, secured by said bond and

mortgage; if so, state which were and which were not secured? Be explicit and give source of your knowledge.

Ans. Some of the notes upon which John W. Thackara brought suit against the company in Colorado, were secured by bond and mortgage and some were not; I now hand to the commissioner a list of such as were so secured, already marked by the commissioner, and I now identify the same with my initials, and make it a part of my deposition; this is made from the books of the company now present; I also hand the commissioner a list of claims which were not thus secured, but which constituted in part the foundation of the suit of Thackara against the company, it is marked by the commissioner Exhibit "N," and I now identify it with my initials, "T. H.," and make it a part of my deposition; being an officer and a creditor of the company, I was of necessity cognizant of all its actions, as I took part in the same I knew of the creation of all its liabilities, and the terms and conditions upon which they were created, from the active part I took in the management of the company's affairs.

Interrogatory twenty-one. At whose instance, or by whose order or request, was this suit brought?

Ans. At my own instance as a bondholder, and the reiter-
166 ated demands of sundry other secured creditors, I and my
co-trustees commenced this suit against the company in de-
fault of the interest then due and demanded.

Interrogatory twenty-second. State whatever you may know as to the indebtedness of said company to Thomas Hare and Jonathan H. Pugh; how created, when created; if settled by note, or otherwise; whether the same is now just, due, and unpaid, in whole or in part. Explain fully all you know about said indebtedness.

Ans. I know of the indebtedness of the aforenamed company, and I now file with the commissioner a list of the same and mark it with my initials, "T. H.," for identification, (and the commissioner marks it Exhibit "O 1." C. P. C., U. S. Commissioner.) It is correctly copied from the books of the company and accompanied by the original notes.

These debts were created at the several dates named therein, under and by virtue of the legislation of the company, as is more fully set forth in Exhibit "D" in my answer to the seventh interrogatory. These several items of indebtedness were settled by notes which appear on the list filed with this answer; they are still due and unpaid in whole or in part, neither principal or interest.

Interrogatory twenty-third. Have Hare and Pugh, as trustees, or
individually, brought any other suit at law, or in equity, in
167 Colorado, or other place, on the indehtedness of the *co—pany*
secured by said bond and mortgage: if so, when and where?

Ans. I have never individually, nor as a trustee, brought any other suit, neither at law nor in equity, neither in Colorado, or elsewhere, for the recovery of the indebtedness of the company secured by said bond and mortgage.

Interrogatory twenty-fourth. What means of knowledge had

John W. Thackara as to the execution of the bond and mortgage aforesaid, and the purpose and object of the same, his opportunities of knowing, his access to the books and proceedings of the company, its meetings, and what official capacity did he occupy to the company? Be explicit and tell all about it.

Ans. In my answer to the seventeenth interrogatory I think I covered every point in this; in a word, on and after he, Thackara, returned to Philadelphia, in March, 1871, he posted himself in relation to all past and current legislation of the company, both by reading the minutes of meetings and interviewing the individual members of the board of directors; as directors we had no secrets which were withheld from him, he, sustaining the relation of agent and general superintendent of the company, was regarded as entitled to know all that was done, and why it was done. On learning all he could, or cared to, he gave a qualified approval of all our doings, except the creation of the mortgage, which he, in the
168 most intemperate and unqualified language, disapproved for
reasons which he made a futile effort to conceal.

Interrogatory twenty-fifth. If you know anything else material to the parties herein, touching this case, you will please state it, and give your means of information and knowledge.

Answer. I know nothing further.

Interrogatory twenty-sixth. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, on the matters in question in this cause; if yea, set forth the same fully and at large in your answer?

Ans. On Exhibit "C," in my answer to the sixth interrogatory, there is an item, number 95, dated December 2d, 1870, for the sum of sixty-six and $\frac{66}{100}$ dollars; this note was made by the company, as evidenced by its date subsequent to the creation of the mortgage; it was given to John R. Brownholtz for money borrowed from him prior to the execution of the bond and mortgage, and was intended to be secured by said mortgage. I now hand to the commissioner a list of the indebtedness of the company, which were intended to be secured by the bond and mortgage. It has already
been marked by the commissioner Exhibit "P," and I now
169 *mark* it with my initials, "T. H.," for identification, and I
desire it to be taken as part of my deposition. This exhibit is properly divided into three classes, as follows: First, list of rules controlled by the trustees, and intended to be secured by the bond and mortgage; second, list of notes not controlled by the trustees, but which are secured by the bond and mortgage; third, this list was intended to be secured, but for which no notes were issued by the company; this exhibit is identical with Exhibit C in my answer to the sixth direct-interrogatory, except that this is divided into classes as above; this is taken from the books of the company. I now hand to the commissioner a paper already marked by the

commissioner Exhibit "Q," and which I now mark it with my initials, "T. H.," for identification, and desire to have it taken as part of my deposition. It is the article of agreement between "The Fairmount Gold and Silver Mining Company" and Thomas Hare and Jonathan H. Pugh, in trust for the uses and purposes therein set forth.

Cross-interrogatories and answers thereto by the witness, THOMAS HARE:

Cross-interrogatory first. If, in answer to the fifth direct-interrog-
atory, you say that the bond and mortgage testified to by you are the
same mentioned in the original and amended bills of com-
170 plainants herein, state how you know they are the same,
and how you know what bond and mortgage are described
in said original amended bills?

Ans. I am morally certain that the bond and mortgage testified to by me in my answer to the fifth interrogatory are the same identical instruments mentioned in the original and amended bills of complainants herein; my knowledge of this is derived from the fact that I was present at the meeting of the stockholders held June 16, 1868, when said bond and mortgage were directed to be created, and present also at the subsequent meeting of the directors, held August 19th, 1870, at which said bond and mortgage were approved, I, Thomas Hare, and Jonathan H. Pugh, being named therein as trustees for the execution of the same, as more fully appears in Exhibit "Q" in my answer to my twenty-sixth direct interrogatory.

Cross-interrogatory second. If, in answer to the sixth direct inter-
rogatory, you say you know what debts were secured by "The
Fairmount Gold and Silver Mining Company," by the bond and
mortgage, state explicitly what each and every of such debts were,
and give the date that each was contracted, the amount of the same;
state what, if any, evidences of indebtedness such creditors had,
and attach a copy of such instrument to your answer; also, state how
you know such indebtedness, and each of them, were secured
171 by such bond and mortgage, and if you were furnished as
trustee at the time of the execution of such bond and mort-
gage with a schedule or list of the indebtedness secured by such
bond and mortgage, attach a copy hereto as an exhibit to your an-
swer; and if, in answer to same interrogatory, you attempt to state
what indebtedness was *intended* to be secured by such bond and
mortgage, state fully how you know, and your means of informa-
tion; state the same fully.

Ans. In my answer to the sixth interrogatory I marked for identification and handed the same to the commissioner a list of all debts intended to be secured by the bond and mortgage—said debts being for borrowed money alone; this list has been marked by the commissioner Exhibit "C," and states explicitly the date, amount, and name of the payee in my answer to the eleventh interrogatory; I handed to the commissioner a list marked by him Exhibit "E,"

showing the evidences of indebtedness which were issued by the company, and held by the creditors for the sundry amounts of money loaned said company at the several dates named therein; that each and all such debts were intended to be thus secured; I know because of my being a member of the board, and participated all of the current business of the same, as well as that of the stockholders. I do therefore testify most positively that the then existing indebtedness of the company for moneys borrowed were all and the
172 only liabilities that were and intended to be covered and secured by the bond and mortgage; I was furnished, as trustee, at the time said bond and mortgage were created, with a list of such indebtedness thus secured, and is identical with Exhibit "C," which is embraced in my answer to the sixth direct interrogatory, and has already been marked with my initials for identification; my knowledge of each and every fact herein specified arises from the oft repeated circumstances, and of my participation in all the business of the company, and my entire familiarity with the object and purpose for which the bond and mortgage were created, namely, to secure the ultimate return, with interest, of the moneys thus loaned to the company, and for no other.

Cross-interrogatory third. If, in answer to the eighth direct interrogatory, you say that said bond and mortgage were made to secure debts thereafter to be created, state how you know the same, and mention each and every of such debts, and what action was taken by The Fairmount Gold and Silver Mining Company to indicate that such bond and mortgage were made to secure debts to be created thereafter.

Ans. In my answer to the eighth direct interrogatory, I testified that there were no debts secured, or intended to be secured, bearing date subsequent to that of the bond and mortgage, namely, August 22, 1870, and my means of knowing this are, that I was a bondholder and director of the company.

173 Cross-interrogatory fourth. If in answer to a direct interrogatories you give a list of all the indebtedness in full that such bond and mortgage were given to secure, and say that such indebtedness was evidenced by notes or any written acknowledgment, state how many, and which of said notes or evidences of indebtedness were paid in any manner by The Fairmount Gold and Silver Mining Company or exchanged for the stock of said company; and also state why such notes or evidences of indebtedness were not cancelled and how they came again to be issued; also state who now are, or claim to be, the owners of each and every of such notes or evidence of indebtedness, and how they came in the possession of such persons?

Ans. None of the notes or bonds of the company were ever paid by it or the trustees, some of the said notes thus secured were conditionally exchanged for the stock of the company under and by virtue of the legislation of the company, an abstract of which, copied from its books, I now submit to the commissioner, and already

marked by him Exhibit "R," and I now mark it with my initials for identification, and desire to have it made part of my deposition. The condition upon which these notes were exchanged not being accepted by all of the creditors (Exhibit "R") the contemplated conversion failed. The notes were never cancelled and reissued, and are the same which appear in Exhibit "E" in my answer
174 to the eleventh direct-interrogatory, and are the original
notes issued by the company to the parties therein named for moneys borrowed by the company from such parties. The parties named in these notes, or evidences of indebtedness, claim to be and are the owners of them under the provisions of the legislation of the company, as more fully appears in Exhibit "R" in answer to this cross-interrogatory, and demand their rights under the mortgage created for their protection and request the trustees to enforce such rights. I, with my co-trustee, J. H. Pugh, have possession of these notes, which more fully appear in Exhibit "E" in my answer to the eleventh direct-interrogatory, for the purposes of this suit.

Cross-interrogatory fifth. If you say that any of the indebtedness of "The Fairmount Gold and Silver Mining Company" was taken up and satisfied, either by exchange of the same for the stock of the company, or in any other manner, give the full and complete bill of all the debts so paid either by stock or in any other manner, and full and complete list of each and every debt of said company not taken in and paid.

Ans. None of the indebtedness of The Fairmount Gold and Silver Mining Company was taken up and satisfied either by the company or the trustees; in my answer to the fourth cross-interrogatory I say that some of the notes of the company given to the
175 various parties for borrowed money were exchanged or con-
verted into the stock of the company upon the condition that *all* the holders of such notes would exchange for the stock of the company within ten days, but many of such creditors failing or refusing to do so, those who had exchanged claimed a release from such conversion in consequence of the failure of the stipulated condition, and have directed the commencement of this suit; I now hand to the commissioner a list of these debts for borrowed money, which were exchanged for the stock of the company, already marked by the commissioner Exhibit "S," and I now identify it with my initials, "T. H.;" and also a list of debts for borrowed money, which were *not* exchanged for the stock of the company, which I desire to be taken as part of my deposition, already marked by the commissioner Exhibit "T," and I now identify it with my initials, "T. H.;" these are taken from the books of the company.

(S'g'd) THOS. HARE.

Sworn and subscribed to before me, this eighth day of August, A. D. 1878.

(S'g'd) CHAS. P. CLARKE,
U. S. Com'r.

The meeting adjourned to meet on Saturday, the 10th day of August, at 11 o'clock a. m.

176 AUGUST 10*th*, 1878—11 a. m.

Present: The Commissioner, John Russell, Esq.

Examination of John Russell, Esq.

Interrogatory first. What is your name, age, residence, and occupation?

Answer. My name is John Russell; age, 40; occupation, lawyer; and residence, 452 Marshall street.

Interrogatory second. How far from Denver, Colorado, do you reside?

Ans. Nearly two thousand miles.

Interrogatory third. Have you the possession of the bond set up in the bill and amended bill of complainants for thirty-four thousand dollars, to be discharged by the payment of seventeen thousand dollars interest, &c., dated 22d August, 1870; if so, file the same with your deposition, and mark it so as to identify it?

Ans. I have not.

Interrogatory fourth. If you have the mortgage executed by "The Fairmount Gold and Silver Mining Company" to Thomas Hare and Jonathan H. Pugh, trustees, dated 22d August, 1870, to secure the payment of said seventeen thousand dollar bond and interest, please file the same in your deposition, and identify it by some mark. 177

Ans. I have not the possession of it?

Interrogatory fifth. Are or are not said bond and mortgage the same identical bond and mortgage set up and referred to in the original and amended bills in this suit?

Ans. I have no personal knowledge of this.

Interrogatory sixth. State whatever you may know as to what debts of said "Fairmount Gold and Silver Mining Company" were secured, or intended to be secured, by the parties at the time the bond and mortgage were executed; please be explicit in giving the names of the creditors and amount of the debts secured by the bond and mortgage; file a list of the claims showing names, dates, and amounts, mark it for identification as part of your deposition.

Ans. I have no personal knowledge as to what debts of "The Fairmount Gold and Silver Mining Company" which were secured, or intended to be secured, by the bond and mortgage. My only knowledge is derived from the minute book of the stockholders, the minute books of the board of directors, and the several books of accounts of the company. Exhibit "C," which is now handed to me by the commissioner, is a correct statement of the debts secured by the mortgage, and said Exhibit "C" is copied from the books of the company. I have examined this exhibit in connection with the books of the company and find it to be 178 correct, and I mark it with my initials, "J. R.," for identification.

Interrogatory seventh. If you give names, dates, and amounts in answer to the last question, then give your knowledge as to the correctness of the same, and tell how you know that said debts were embraced in, covered by, and intended to be secured by the seventeen thousand dollar bond and mortgage?

Ans. I have no personal knowledge that these debts in Exhibit "C" are secured by the mortgage, except so far as the books of the company spoken of in my last answer, illustrate that these debts were secured by the bond and mortgage. The commissioner now hands me Exhibit "D," which is an abstrct taken from the minute book of the stockholders, and of the directors of the company; it sets forth all my knowledge, and my means of knowledge of these matters to which the interrogatory points. I mark Exhibit "D" with my initials, "J. R.," for identification.

Interrogatory eighth. If any debts were secured by said bond and mortgage *created after* the date of said mortgage, name the parties, and give dates and amounts, and your means of knowing?

Ans. I know of no debts secured by the bond and mortgage which were created after the date of the mortgage. My means of
knowing are that in December of 1871 I became a stock-
179 holder and director of the company, and familiar with its
business and legislation.

Interrogatory ninth. In your answer to the sixth interrogatory, do or do you not mean to say that no other debts were secured by the bond and mortgage than those named by you in your answer to the sixth interrogatory?

Ans. I mean to say that there were no debts other than these specified in my answer to the sixth interrogatory, which were secured by the bond and mortgage since December of 1871, at which time I became a stockholder and director of the company.

Interrogatory tenth. State whatever you may know as to those debts created by "The Fairmount Gold and Silver Mining Company" *subsequent* to the date of the bond and mortgage aforesaid, being secured, or intended to be secured, by the said bond and mortgage, and your means of knowing?

Ans. I have no knowledge of any debts created by the company subsequent to the date of the bond and mortgage, which are secured, or intended to be secured, by the bond and mortgage, and my means of knowing are that in December, 1871, I became a stockholder and director of the company, and have continued in both relations ever since.

Interrogatory eleventh. If you have the possession of the
180 notes executed by the Fairmount Gold and Silver Mining
Company which were delivered to the payees or the creditors of said company, and which notes were covered and secured by the aforesaid bond and mortgage, you will please file them with your deposition, and give the list of them showing the names, dates,

and amounts, so marked as to be identified as a part of your deposition.

Ans. I have not the possession of the notes, the subject matter of the interrogatory, but they are now before me, having been handed to me by the commissioner, accompanied by a list marked Exhibit "E," which is a list of the notes handed to me by the commissioner, and from comparison of the list with the original notes, I find it to be a correct list of the same; I now mark Exhibit "E," and all the notes of which Exhibit "E" is a duplicate list, with my initials, "J. R.," for identification.

Interrogatory twelfth. If you know the amount of indebtedness of the company to one John W. Thackara, you will please state the amount, when and how created, and if any note or notes were executed and delivered to him, then give the dates and amounts of the same, and explain the same fully; and if paid, how and when, and by whom; were they sued upon; if so, when, where, and by whom.

Ans. The commissioner now hands to me Exhibit "F," which
sets out fully the indebtedness of the company to John W.
181 Thackara, with the amounts of the same, and the dates of
the creation of the same, notes were executed and delivered to him corresponding with the debts mentioned in Exhibit "F," and were subsequently sued upon by him on the 22d day of March, 1873, in the district court of the second judicial district of the Territory of Colorado, in an action which he brought against the company, I mark Exhibit "F" with my initials, "J. H.," for identification; the commissioner now hands to me Exhibit "G," and which upon examination I find to be an abstract of the legislation of the company, having particular regard and relation to the debts specified on Exhibit "F," I mark this exhibit with my initials, "J. R.," for identification; two of the notes mentioned in Exhibit "F," to wit, note for ten thousand dollars, dated December thirty-first, 1871, note for seventeen hundred and eighty-nine and $\frac{50}{100}$ dollars of date April 17, 1872, were notes given to John W. Thackara for back salary, and were not to be paid till the profits of the company would guarantee such payment; he well knew these conditions at the time that he received these notes; I being present at the time that he received them, and talked of the conditions of the same, which he well knew and understood, and accepted and received them with the possession of such knowledge; two of the notes
specified upon Exhibit "F," to wit, note for thirty dollars,
182 April 3d, 1872, note, twenty dollars, April 3d, 1872, were
notes given by the company to John W. Thackara for fifty per centum of stock which he purchased from the company, and are known as drawback notes, and were to be paid out of the first profits of the company; there has been no profits made by the company since its organization; none of the debts specified upon Exhibit "F" were intended to be secured by the bond and mortgage, but were created under the legislation of the company, as appears

in Exhibit "G," already referred to in my answer to this interrogatory.

Interrogatory thirteenth. State whatever you may know as to the indebtedness of said "Fairmount Gold and Silver Mining Company" to one Abram C. Brown, when and how created, when and how paid; if paid, to whom Brown assigned such indebtedness; and if sued upon, by whom, when, and in what court? Tell all you may know about the same, and how you know it.

Ans. The commissioner now hands to me Exhibit "H," which is a list of the indebtedness of the company to Abram C. Brown, as appears upon the books of the company, which are now here, and with which I have compared this exhibit. All the debts mentioned in the exhibit were assigned by Brown and made part of the foundation of an action by John W. Thackara against the company, in the district court of the second judicial district, of the Territory of Colorado, on the 22d day of March, 1873, said debts having been assigned by the said Brown to the said Thackara. 183

I mark this Exhibit "H" with my initials, "J. R.," for identification. Five of the notes, to wit, note for two hundred and fifty dollars, Aug. 5, 1868; note three hundred and thirty-three and $\frac{33}{100}$ dollars, August 5th, 1868; note one hundred and eighty-three and $\frac{33}{100}$ dollars, July 6, 1869; note six hundred and eighty dollars, October 9th, 1869, and note three hundred and fifty and $\frac{69}{100}$ dollars, are secured by the bond and mortgage. Also, note sixty dollars, April 30, 1872; note twenty-five dollars, May 24, 1872; note one hundred and ninety dollars, July 2d, 1872; note five hundred dollars, August 15, 1872, and note two hundred and fifty dollars, August 28, 1872. These notes are known as drawback notes, and to be paid out of the first profits of the company, according to the the legislation of the said company, heretofore referred to. There has been no profits, and my means of knowing this and other facts are that I have been a director of the company since December, 1871, and up to the present time. The debts referred to in Exhibit "H" have not been paid.

The meeting adjourned to meet on Monday, the 12th day of August, 1878, at 11 o'clock a. m., without concluding the direct examination of the witness, John Russell, Esq.

AUGUST 12TH, 1878.

184 Present: The Commissioner, John Russell, Esq.

On account of the inability of the witness to proceed, the meeting was adjourned until Wednesday, August 14th, 1878.

AUGUST 14TH, 1878.

Present: The Commissioner, John Russell, Esq.

Interrogatory fourteenth. If you know of any indebtedness on the part of said company to J. P. Harker, then tell all about it, the amount thereof, when created, how created, how settled, by note or otherwise; if assigned by Harker, to whom; if suit was brought, by whom, and when; and explain the whole matter, and your means of knowing?

Ans. Upon examination of the books of the company now before me I find from said books that the company is indebted to John P. Harker in the sum of twenty dollars for borrowed money; the debt was created May 17th, 1869, under the legislation of the company, and is secured by the bond and mortgage; the company gave a note to John P. Harker for said amount of twenty dollars on the 17th of May, 1869, which note was assigned by Harker to John W. Thackara, and was made part of the suit of John W. Thackara
185 against the company, which suit was brought on the 22d day of March, 1873, in the district court of the second judicial district of the Territory of Colorado; my knowledge of these facts is obtained by me in the following manner, namely: That I have been a director of the company since 1871, and was one of the defendants in the suit to which I have just referred.

Interrogatory fifteenth. If you have any knowledge of any indebtedness of said company to one Swain Thackara, then tell all you may know about it, giving dates, amounts, how and when created; if transferred, to whom; if sued on, by whom and when?

Ans. The books of the company, now before me, show an indebtedness of the company to Swain Thackara, amounting to one hundred dollars, of date April 12, 1869, for which the company gave a note at that date; the debt was created under the legislation of the company, and the note given therefor was transferred to John W. Thackara, and sued on by him in the district court of the second judicial district of the Territory of Colorado; the note referred to is secured by the bond aud mortgage.

Interrogatory sixteenth. If you have any knowledge as to whether any debts due from said company to John W. Thackara, Abram C. Brown, J. P. Harker, and Swain Thackara, above described and spoken of, were secured by said bond and mortgage, you
186 will please describe fully and clearly which of them, giving names, dates, and amounts of, *are thus secured*, and which were *not thus secured*, and your means of knowing?

Ans. Exhibit I, marked by the commissioner, is now in my hands, and I mark it with my initials, "J. R.," for identification; it contains a list in full of the debts secured by the mortgage, and which formed in part the foundation of the suit of John W. Thackara against the company referred to by me in the previous answer; Exhibit "K," marked by the commissioner, is now in my hands, and I mark it with my initials, "J. R.," for identification, and is a full list of the debts not secured by the bond and mortgage which formed in part the foundation of the action of Thackara against the company; I have compared these exhibits with the books of the company from which they were taken, and find that they are correct; my means of knowing these facts are that I was one of the defendants in the suit referred to, and that I have been a director of the company since 1871, and am well informed of its business and affairs.

Interrogatory seventeenth. State whatever you may know as to the knowledge of said John W. Thackara that the bond and mortgage aforesaid were executed, and for what purpose they were exe-
cuted, what debts were or were not secured by them, and tell
187 all you may know about it, and your means of knowing, as
well as Thackara's means of knowing?

Ans. During the latter part of the year 1871, and the begining of the year 1872, I had frequent conversations with John W. Thackara, concerning the bond and mortgage; he informed me that the bond and mortgage for seventeen thousand dollars was entered of record in Clear Creek county, Colorado, before he left Colorado, which was some time in the early part of 1871; the purpose for which the bond and mortgage was executed was freely discussed between me and him, and he well knew that debts were secured by the bond and mortgage, as he frequently spoke of the debts so secured in his conversations with me; my means of knowing are that I was director of the company at the time indicated and attended the meetings of the board of directors, and at which meetings John W. Thackara was nearly always present, and heard and knew all the doings of the board of directors; he several times examined the books in connection with myself, and was very familiar with them by reason of such frequent reference to them.

Interrogatory eighteenth. State whatever you may know as to whether the indebtedness of said company to the sundry creditors named in the answer and list filed with the sixth interrogatory is
bona fide or not, or due and owing by the company at the time
188 of the commencement of this suit and since?

Ans. The debts named in the list are *bona fide*, and were due and owing by the company at the time of the commencement of this suit.

Interrogatory nineteenth. Will you please give a list of the debts due from said company, for which this suit was brought, which are *bona fide* due, owing and unpaid, and secured by the mortgage aforesaid, and also your means of knowing?

Ans. Exhibit "L," marked by the commissioner, is now before me, and mark it with my initials, "J. R.," for identification; this exhibit is a list of the debts due by the company, for which this suit was brought; the debts are *bona fide*, due, owing, and unpaid, and are secured by the mortgage; the list is correctly copied from the books of the company now here, and my means of knowing these facts are that I have been a director of the company since 1871, and am familiar with its books and business.

Interrogatory twentieth. Were or were not any or all of the notes on said company, upon which John W. Thackara brought suit in Clear Creek county, Colorado, secured by said bond and mortgage;

if so, state which were and which were not secured? Be explicit, and give your means of knowledge.

189 Ans. Some of the notes were secured by the bond and mortgage, others were not; Exhibit "M," marked by the commissioner, now in my hands, and marked with my initials, "J. R.," for identification, contains a list of those notes secured by the bond and mortgage; Exhibit "N," marked by the commissioner, and also marked by me with my initials, "J. R.," for identification, contains a list of those notes not secured by the bond and mortgage, and my source of knowledge of these facts arises from my directorship in the company for nearly seven years, and my frequent examination of the books of the company; and, also, that the company was defendant in the suit referred to, and which suit was commenced in 1873.

Interrogatory twenty-first. At whose instance, or by whose order or request, was this suit brought?

Ans. Of that I have no personal knowledge. I am not a bondholder.

Interrogatory twenty-second. State whatever you may know as to the indebtedness of said company to Thomas Hare and Jonathan H. Pugh, how created, when created, if settled, by note or otherwise; whether the same is now just, due, and unpaid, in whole or in part? Explain *fully* all you know about said indebtedness.

190 Ans. Exhibit "O 1," marked by the commissioner, and marked by me with my initials, "J. R.," for identification, is a *correct* transcript from the books of the company of its indebtedness individually to Thomas Hare; Exhibit "O," marked by the commissioner, and marked by me with my initials, "J. R.," for identification, is a correct transcript of the books of the company, and shows the indebtedness of the company to Jonathan H. Pugh, one of the trustees, individually; and the debts were created at their respective dates, and notes given therefor by the company, under the legislation of the company, to which I have previously referred, and are secured by the bond and mortgage. The debts are just, due, and unpaid.

Interrogatory twenty-third. Have Hare and Pugh, as trustees, or individually, brought any other suit, either at law or in equity, in Colorado, or other place, on indebtedness of the company secured by the said bond and mortgage; if so, when and where?

Ans. Of this I have no personal knowledge.

Interrogatory twenty-fourth. What means of knowledge had John W. Thackara as to the execution of the bond and mortgage aforesaid, and the purpose and object of the same, his opportunities of knowing, his access to the books and proceedings of the company, its meetings, and what official capacity did he occupy to the company? Be explicit, and tell all about it.

Ans. I have fully answered this question in my answer to the seventeenth direct interrogatory, with the exception that

191 Thackara's official capacity in 1871 was that of general agent.

Interrogatory twenty-fifth. If you know anything else material to the parties herein, touching this case, you will please state it, and give your means of information and knowledge?

Ans. I know of nothing further.

Interrogatory twenty-sixth. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them; or that may be material to the subject of this, your examination, or the matters in question in this cause; if yea, set forth the same fully and at large in your answer?

Ans. Exhibit P, marked by the commissioner, and marked by me with my initials, "J. R.," for identification, is identical with Exhibit C in my answer to the sixth interrogatory, except that it is divided into classes, which, in examination of the exhibit, will fully develop.

Cross-interrogatories and answers thereto by the witness, JOHN RUSSELL, Esq., on the part of the complainant:

Cross-interrogatory first. If, in answer to the fifth direct interrogary, you say that the bond and mortgage testified to by you are the same mentioned in original and amended bills of complaint herein, state how you know they are the same, and how you
192 know what bond and mortgage are described in said original and amended bills?

Ans. Of this I have no personal knowledge.

Cross-interrogatory second. If, in answer to the sixth direct interrogatory, you say you know what debts were secured by the Fairmount Gold and Silver Mining Company by the bond and mortgage, state explicitly what each and every of such debts were, and give the date that each was contracted, the amount of the same; state what, if any, evidence of indebtedness such creditors had, and attach a copy of such instruments to your answer; also, state how you know such indebtedness, and each of them, were secured by such bond and mortgage, and if you were furnished, as trustees, at the time of the execution of such bond and mortgage, with a schedule or list of the indebtedness secured by such bond and mortgage, attach a copy hereto as an exhibit to your answer, and if, in answer to same interrogatory, you attempt to state what indebtedness was *intended* to be secured by such bond and mortgage, state fully how you know, and your means of information; state the same fully?

Ans. In my answer to the sixth direct interrogatory Exhibit "C" is made a part thereof, and marked with my initials, "J. R.," for identification. In my answer to that interrogatory I say that it is a complete list of all the debts of the company intended to
193 be secured by the bond and mortgage, and also my means and sources of knowledge. In my answer to the eleventh

direct interrogatory Exhibit "E" and its accompanying notes are marked with my initials, "J. R.," for identification; and these are some of the notes which were intended to be secured by the bond and mortgage; and my means of knowledge that they are so secured is contained in Exhibit "D" in my answer to the seventh direct interrogatory, and marked with my initials, "J. R.," for identification, is a correct transcript from the books of the stockholders and of the board of directors.

Cross-interrogatory third. If, in answer to the eight direct interrogatory, you say that said bond and mortgage were made to secure debts thereafter to be created, state how you know the same, and mention each and every of such debts, and what action was taken by the Fairmount Gold and Silver Mining Company to indicate that such bond and mortgage were made to secure debts to be created thereafter.

Ans. In my answer to the eighth direct interrogatory I say that there were *no* debts created after date of the bond and mortgage which were intended to be secured by the bond mortgage; my means of knowing are that I have been a stockholder and director of the company since 1871.

Cross-interrogatory fourth. If, in answer to direct-interrogatories, you give a list of all the indebtedness in full that such
194 bond and mortgage were given to secure, and say that such
indebtedness was evidenced by notes or any written acknowledgements, state how many, and which of said notes or evidences of indebtedness, were paid in any manner by the Fairmount Gold and Silver Mining Company, or exchange for the stock of said company; and also state why such notes or evidences of indebtedness were not cancelled, and how they became again to be issued; also state who now are, or claim to be, the owners of each and every of such notes or evidences of indebtedness, and how they came into the possession of such persons.

Ans. None of the notes referred to in the question were paid in any manner by the Fairmount Gold and Silver Mining Company; some of them were exchanged for the stock of the company, conditionally, under the legislation of the company, which is contained in Exhibit "R," and which I marked my initials, "J. R.," for identification. Exhibit "B" is marked by the commissioner also. The notes were not cancelled; the conditions of the conversion of the same having failed, as more fully appears in Exhibit "R" already referred to. The notes were never re-issued, and the notes referred to in my answer to the eleventh direct interrogatory, and marked by me, are the original notes issued by the company for borrowed money and intended to be secured by the bond and mortgage, and came
195 into the possession of the various holders thereof under the
legislation of the company and who now claim to be the owners of the same.

Cross-interrogatory fifth. If you say that any of the indebtedness of "The Fairmount Gold and Silver Mining Company was taken up and satisfied either by exchange of the same for the stock of the company or any other manner, give a full and complete bill of all the debts so paid, either by stock, or in any other manner, and a full and complete list of each and every debt of said company not taken in and paid.

Ans. Exhibit "S" marked by the commissioner, and also marked by me with my initials, "J. R," for identification, is a complete list of the debts conditionally converted, as I have stated in my answer to the last cross-interrogatory.

Exhibit "T," marked by the commissioner, and also marked by me with my initials, "J. R.," for identification is a list of debts not converted under the legislation of the company. The books of the company show that all holders of notes secured by the mortgage did not convert, and the legislation of the company thereby fell.

(S'g'd) JOHN RUSSELL.

Sworn and subscribed to before me, this 14th day of August, A. D. 1878.

(S'g'd) CHAS. P. CLARKE,
U. S. Com'r.

196 The meeting adjourned until Thursday, August 15th, A. D. 1878, at 2 o'clock p. m.

AUGUST 15TH, 1878, 2 P. M.

Present: The Commissioner; Alfred Smith.

Examination of Alfred Smith.

Interrogatory first. What is your name, age, occupation, and residence?

Answer. Alfred Smith; age, 37 years; banker; Boynton avenue, Germantown.

Interrogatory second. How far from Denver, Colorado, do you reside?

Ans. About two thousand miles.

Interrogatory third. Have you the possession of the bond set up in the bill and amended bill of complainants for thirty-four thousand dollars, to be discharged by the payment of seventeen thousand dollars, interest, &c., dated 22d August, 1870; if so, file the same with your deposition, and mark it so as to identify it?

Ans. No; I have not the bond.

Interrogatory fourth. If you have the mortgage executed by the Fairmount Gold and Silver Mining Company to Thomas Hare and Jonathan H. Pugh, trustees, dated 22d August, 1870, to
197 secure the payment of said seventeen thousand dollar bond and interest, please file the same in your deposition and identify it by some mark?

Ans. I have not.

Interrogatory fifth. Are or are not said bond and mortgage the same identical bond and mortgage set up and referred to in the original and amended bills of complainants in this suit?

Ans. I have no personal knowledge of that.

Interrogatory sixth. State whatever you may know as to what debts of said Fairmount Gold and Silver Mining Company were secured or intended to be secured by the parties at the time the bond and mortgage were executed; please be explicit in giving the names of the creditors and the amounts of the debts secured by the bond and mortgage; file a list of the claims, showing names, dates, and amounts; mark it for indentification as part of your deposition.

Ans. This is a list of the debts intended to be secured by the mortgage, showing names, dates, and amounts, which I have prepared from the books of the company; this list has already been marked by the commissioner Exhibit "C," and I now identify it with my initials, "A. S.;" the paper now handed to me by the commissioner, marked Exhibit "D," is an abstract from the minute
198 book of the company, showing the legislation of the company with regard to the bond and the debts intended to be secured by the bond and mortgage, which I now mark with my initials, "A. S," for identification.

Interrogatory seventh. If you give name, dates, and amounts, in answer to the last question, then give your knowledge as to the correctness of the same, and tell how you know that said debts were embraced in, covered by, and intended to be secured by the seventeen thousand dollar bond and mortgage?

Ans. I know from the books of the company, having been director and secretary of the company since 1871; Exhibit "D" is an abstract from the minute book of the company, showing the legislation of the company, and is in my handwriting.

Interrogatory eighth. If any debts were secured by said bond and mortgage after the date of said mortgage, name the parties, and give dates and amounts, and your means of knowing?

Ans. There were no debts created subsequent to the bond and mortgage which were intended to be secured by the bond and mortgage, that appear on the books; my means of knowing are that I was a director and secretary of the company since 1871; I am familiar with the legislation of the company.

Interrogatory ninth. In your answer to sixth interrogatory,
199 do you, or do you not mean to say that no other debts were secured by the bond and mortgage, than those named by you in your answer to the sixth interrogatory?

Ans. No other debts appear upon the books of the company that were intended to be secured by the bond and mortgage.

Interrogatory tenth. State whatever you may know as to those debts created by the Fairmount Gold and Silver Mining, Company *subsequent* to the date of the bond and mortgage aforesaid, being secured or intended to be secured by the said bond and mortgage, and your means of knowing?

Ans. There were no debts created subsequent to the mortgage, intended to be secured by the mortgage, by the company, that appear upon the books of the company; my means of knowing are, that I was a director and secretary of the company since December, 1871, until the present time.

Interrogatory eleven. If you have the possession of the notes executed by said Fairmount Gold and Silver Mining Company which were delivered to the payees or creditors of said company, and which notes were covered and secured by the aforesaid bond and mortgage, you will please file them with your deposition, and give a list of them showing the names, dates, and amounts, so marked as to be identified as part of your deposition?

200 Ans. I have not the notes or possession of them; I made
the list of the notes marked Exhibit "E," which is now handed
to me by the commissioner, showing names, dates, and amounts, it is an accurate copy and correct list of the notes covered by and secured by the bond and mortgage. I now mark Exhibit "E" with my initials, "A. S." for identification.

Interrogatory twelfth. If you know the amount of indebtedness of the company to one John W. Thackara, you will please state the amount; when and how created; and if any note or notes were executed and delivered to him, then give the dates, amounts of the same, and explain the same fully; and if paid, how, and when, and by whom; were they sued upon; if so, when, where and by whom?

Ans. I know of the indebtedness of the company to John W. Thackara, and I now hand to the commissioner a list of the indebtedness of the company to John W. Thackara, marked Exhibit "F," which I mark with my initials "A. S.," for identification. There were two notes given to John W. Thackara, one dated December 31, 1871, for ten thousand dollars, and the other dated April 17, 1872, for seventeen hundred and eighty-nine and $\frac{50}{100}$ dollars, which were for back salary to be paid him when the profits of the company would guarantee their payment. There were two notes
given to John W. Thackara and dated April 3, 1872, for
201 twenty dollars, which were known as drawback notes, to be
paid out of the first profits of the company; they were given
for fifty per centum of the amount of stock subscribed by John W. Thackara at the time John W. Thackara brought suit upon said notes mentioned in Exhibit "F," against the Fairmount Gold and Silver Mining Company on the 22d day of March, 1873, in the district court of the second judicial district of the Territory of Colorado. Exhibit "G," now shown me by the commissioner, is an extract from the Minute Book of the company, showing the legislation of the company. These extracts show the legislation of the company with regard to the list of indebtedness to John W. Thackara, set forth in Exhibit "F." Exhibit "G" I now mark with my initials, "A. S.," for identification. Mr. Tackara was present at the time when these notes were made, and he accepted them upon the terms stated in the report of the committee. None of these have ever been paid, and there were no profits made by the com-

pany. None of the indebtedness in Exhibit F, were intended to be secured by the bond and mortgage, having been created long subsequent the bond and mortgage, and were for back salary, and were to be paid out of the first profits, and when the profits *wou-d* guarantee their payment.

Interrogatory thirteenth. State whatever you may know
202 as to the indebtedness of said Fairmount Gold and Silver
Mining Company to one Abram C. Brown; when and how created; when and how paid; if paid, to whom Brown assigned said indebtedness; and if sued upon, by whom, when, and what court? Tell all you may know about the same, and how you know it.

Ans. The paper which has been marked by the commissioner, and which I now identify with my initials, "A. S.," is a list of the indebtedness of the company to Abram C. Brown. I know in part of the indebtedness of the company to Abram C. Brown. The five notes, dated respectively August 5th, 1868, for two hundred and fifty dollars, March 2d 1869, for three hundred and thirty-three and $\frac{33}{100}$ dollars, July 6, 1869, for one hnndred and eighty-three and $\frac{33}{100}$ dollars, October 9, 1869, for six hundred and eighty dollars, and March 31, 1870, for three hundred and fifty and $\frac{69}{100}$ dollars, appear upon the books of the company, as intended to be secured by the bond and mortgage. The five notes, dated respectively April 30, 1872, for sixty dollars, May 24, 1872, for twenty-five dollars, July 2, 1872, for one hundred and ninety dollars, August 15th, 1872, for five hundred dollars, August 28th, 1872, for two hundred and fifty dollars, were given to Mr. Brown for fifty per centum of the
amount of stock subscribed for by Mr. Brown at these dates,
203 and were to be paid out of the first profits of the company,
and were known as drawback notes. Mr. Brown transferred these notes to John W. Thackara, and he sued the Fairmount Gold and Silver Mining Company, March 22d, 1873, in the district conrt of the second judicial district of the Territory of Colorado.

There were no profits ever realized by the company from which to pay these notes. At the time these drawback notes were given I was a director of the company and its secretary.

Interrogatory fourteenth. If you know of any indebtedness on the part of said company to J. P. Harker, then tell all about it, the amount thereof, when created, how created, how settled, by note or otherwise; if assigned by Harker, to whom; if suit was brought, by whom, and when; and explain the whole matter and your means of knowing?

Ans. On the books of the company it appears that John P. Harker received a note May 17, 1869, for twenty dollars, which was secured by bond and mortgage; it was for money borrowed by the company from Mr. Harker. This note was assigned by Mr. Harker to John W. Thackara, and was part of the foundation of the suit of John W. Thackara against the company, March 22d, 1873, in the district court of the second judicial district of the Territory of Colo-

204 rado; I derived this knowledge from the books of the company, having been a director of the company since 1871.

Interrogatory fifteenth. If you have any knowledge of any indebtedness of said company to one Swain Thackara, then tell all you may know about it, giving dates, amounts, how and when created; if transferred, to whom; if sued on, by whom, and when?

Ans. It appears upon the books of the company that Swain Thackara received a note, dated April 12, 1869, for one hundred dollars for money loaned by him to the company, which was intended to be secured by the bond and mortgage; this note was transferred by Swain Thackara to John W. Thackara, and made part of the foundation of the suit of John W. Thackara against the company in the district court of the second judicial district of the Territory of Colorado, March 22d, 1873.

Interrogatory sixteenth. If you have any knowledge as to whether any of the debts due from said company to John W. Thackara, Abram C. Brown, J. P. Harker, and Swain Thackara, above described and spoken of, were secured by said bond and mortgage, you will please describe fully and clearly which of them; giving names, dates, and amounts, *are thus secured*, and which were *not thus secured*, and your means of knowing?

Ans. The paper which is now shown me, and which is
205 marked by the commissioner Exhibit "I," and which I now mark with my initials, "A. S.," for identification, is a list of the debts secured by bond and mortgage in the suit of John W. Thackara against the Fairmount Gold and Silver Mining Company, giving dates and amounts taken from the books of the company; the paper already marked Exhibit "K," handed to me by the commissioner, and marked by me with my initials, "A. S.," for identification, is a list of the debts not secured by the bond and mortgage in the suit of John W. Thackara against the Fairmount Gold and Silver Mining Company, taken from the books of the company; I know by being a director and secretary of the company since 1871.

Interrogatory seventeenth. State whatever you may know as to the knowledge of John W. Thackara that the bond and mortgage aforesaid were executed, and for what purpose they were executed; what debts were or were not secured by them, and tell all you may know about it, and give your means of knowing, as well as Thackara's means of knowing?

Ans. I had several conversations with John W. Thackara in 1871, before I became a stockholder and director of the company, in regard to the financial condition and affairs of the Fairmount Gold and Silver Mining Company, of which he was the general agent; at which time he informed me there was a bond and mortgage of seventeen thousand dollars, entered of record against the com-
206 pany in Clear Creek county, Territory of Colorado, which was to secure moneys borrowed from different individuals to complete the works of the company in Colorado; after I became a

member of the board of directors in 1871, Mr. Thackara, who was generally present at the meetings of the board of directors, frequently spoke of the existing bond and mortgage, and the indebtedness that it was to secure; he had access to the books, and was conversant with the books of the company.

Without concluding the direct examination of the witness the meeting adjourned to meet on Friday the 16th day of August, 1878, at 2 o'clock p. m.

AUGUST 16TH, 1878, 2 P. M.

Present: The Commissioner; Alfred Smith.

Examination of Alfred Smith resumed.

Interrogatory eighteenth. State whatever you may know as to whether the indebtedness of said company to the sundry creditors named in the answer and list filed to sixth interrogatory is *bona fide* or not, or due and owing by the company at the time of the commencement of this suit and since?

Ans. They are *bona fide* due and owing by the company.

207 Interrogatory nineteenth. Will you please give a list of the debts due from said company, for which this suit was brought, which are *bona fide* due, owing, and unpaid, and secured by the mortgages aforesaid; and also your means of knowing?

Ans. Exhibit "L," which is now shown me by the commissioner, and which I now mark with my initials, "A. S.," for identification, is a list of the debts owing by the company for which this suit was brought, and which are secured by the mortgage. They are due and unpaid. My means of knowing are that I was a director and secretary of the company since 1871. I have copied this list from the books of the company.

Interrogatory twentieth. Were or were not any, or all of the notes on said company upon which John W. Thackara brought suit in Clear Creek county, Colorado, secured by said bond and mortgage? If so, state which were and which were not secured; be explicit and give source of your knowledge.

Ans. Some of the notes were secured by the bond and mortgage and others were not. Exhibit "M," already marked by the commissioner, and now marked by me with my initials, "A. S.," for identification. is a list of the debts secured by the bond and mortgage; and Exhibit "N," now handed to me by the commissioner, and marked with my initials, "A. S.," for identification, is a list of the debts not secured by the bond and mortgage.

These lists are copied from the books of the company. I know, having been a director and secretary of the company since 1871.

208 Interrogatory twenty-first. At whose instance, or by whose order and request was this suit brought?

Ans. I have no personal knowledge of this fact. I am not a bondholder.

Interrogatory twenty-second. State whatever you may know as to the indebtedness of said company to Thomas Hare and Jonathan H. Pugh, how created, when created; if settled, by note, or otherwise; whether the same is now just, due, and unpaid in whole or in part? Explain fully all you know about said indebtedness.

Ans. Exhibit "O," now handed to me by the commissioner, which I mark with my initials, "A. S.," for identification, is a list of the indebtedness of the company to Jonathan H. Pugh, intended to be secured by the bond and mortgage, which I have copied from the books of the company; Exhibit "O 1," now handed to me by the commissioner, which I mark with my initials for identification, is a list of the indebtedness of the company to Thomas Hare, intended to be secured by the bond and mortgage, which I have copied from the books of the company. These debts are due and unpaid. These lists show the dates and the amounts of money loaned to the company by these persons.

Interrogatory twenty-third. Have Hare and Pugh, as trustees, or
individually, brought any other suit, at law or in equity, in
209 Colorado, or other place, on the indebtedness of the com-
pany secured by said bond and mortgage; if so, when and
where?

Ans. I do not know that they have.

Interrogatory twenty-fourth. What means of knowledge had John W. Thackara as to the execution of the bond and mortgage aforesaid, and the purpose and object of the same; his opportunities of knowing, his access to the books, and proceedings of the company; its meetings, and what official capacity did he occupy to the company? Be explicit and tell all about it.

Ans. I do not know that I can more fully answer this interrogatory than I have already stated in my answer to the seventeenth interrogatory. John W. Thackara was general agent of the company in 1871.

Interrogatory twenty-fifth. If you know of anything else material to the parties herein touching this case; you will please state it, and give your means of information and knowledge?

Ans. I do not think of anything additional than that which I have already given.

Interrogatory twenty-sixth. Do you know, or can you set forth
any other matter or thing which may be a benefit or advantage to
the parties at issue in this cause, or either of them, or that may be
material to the subject of this your examination, or the matters in
question in this cause; if yea, set forth the same fully and at
210 large in your answer?

Ans. Exhibit "P," now handed to me by the commissioner, and which I now mark with my initials for identification is the same as Exhibit "C" in my answer to the sixth interrogatory, with this exception, it is divided into three classes. This list is copied from the books of the company, and the several books referred to by me in this and my previous answers, are now present for examination.

Cross-interrogatories and answers thereto by the witness, ALFRED SMITH, on the part of the complainants:

Cross-interrogatory first. If, in answer to the fifth direct interrogatory, you say that the bond and mortgage, testified to by you, are the same mentioned in the original and amended bills of complaint herein, state how you know they are the same, and how you know what bond and mortgage are described in said original and amended bills?

Ans. Of this I have no personal knowledge.

Cross-interrogatory second. If, in answer to the sixth direct interrogatory you say you know what debts were secured by The Fairmount Gold and Silver Mining Company by the bond and mortgage, state explicity what each and every of such debts were, and give the dates that each was contracted; the amount of the same; state what, if any, evidence of indebtedness such creditors
211 had, and attach a copy of such instruments to your answers;
also, state how you know such indebtedness, and each of them, were secured by such bond and mortgage, and if you were furnished, as trustees, at the time of the execution of such bond and mortgage, with a schedule or list of the indebtedness, secured by such bond and mortgage, attach a copy hereto as an exhibit to your answer; and if in answer to the same interrogatory, you attempt to state what indebtedness was *intended to be secured* by such bond and mortgage, state fully how you know, and your means of information; state the same fully?

Ans. In my answer to the sixth direct interrogatory, I said that Exhibit "C" is a list of the debts intended to be secured by the mortgage, showing names, dates, and amounts; it is a list of all the debts intended to be secured by the bond and mortgage; my knowledge of the same is derived from the books of the company, of which I have been secretary and director since 1871.

Cross-interrogatory third. If, in answer to the eighth direct interrogatory, you say that the said bond and mortgage were made to secure the debts thereafter to be created, state how you know the same, and mention each and every such debts, and what action was taken by the Fairmount Gold and Silver Mining Company,
212 to indicate that such bond and mortgage were made to
secure debts to be created thereafter.

Ans. In my answer to the eighth interrogatory I said there was no debts created subsequent to the bond and mortgage intended to be secured by that bond and mortgage. It appears on the books of the company. My means of knowing are that I was secretary of the company, and a director since 1871, and I am familiar with the legislation of the company.

Cross-interrogatory fourth. If, in answer to direct interrogatories, you give a list of all the indebtedness in full, that such bond and mortgage were given to secure, and say that such indebtedness was evidenced by notes or any written acknowledgment, state how many and which of said notes or evidences of indebtedness were paid in any manner by the Fairmount Gold and Silver Mining Company, or exchanged for the stock of said company, and also state why such notes or evidences of indebtedness were not cancelled, and how they came again to be issued; also, state who now are, or who claim to be, the owners of each and every of such notes or evidences of indebtedness, and how they came into the possession of such persons?

Ans. Notes intended to be secured by the bond and mortgage;
some of them were conditionally exchanged for stock of the com-
pany, under a resolution passed by the board of directors, of
213 which Exhibit "R," already marked by the commissioner,
and which I now mark with my initials, "A. S.," for
identification, is a correct copy. Such as were exchanged were not cancelled, because the conditions had not been carried out, and have never been complied with. They never were re-issued. Exhibit "R" is a correct copy of the resolution taken by me from the minute book of the company.

Cross-interrogatory fifth. If you say that any of the indebtedness of the Fairmount Gold and Silver Mining Company was taken up and satisfied, either by exchange of the same for the stock of the company, or in any other manner, give a full and complete bill of all the debts so paid, either by stock or in any other manner, and a full and complete list of each and every debt of the said company not taken in and paid?

Ans. Exhibit "S," now handed to me by the commissioner, and which I mark with my initials, "A. S., for identification, is a list of the debts intended to be secured by the bond and mortgage conditionally exchanged, as I have described in my answer to the last cross-interrogatory. Exhibit "T," now handed to me by the com-
missioner, and marked by me with my initials, "A. S., for
214 identification, is a list of the debts never exchanged, under
the said resolution of the board of directors.

(S'g'd) ALF'D SMITH.

Sworn and subscribed to before me, this sixteenth day of August, A. D. 1878.

(S'g'd) CHAS. P. CLARKE,
U. S. Com'r.

Adjourned to meet on Saturday, the seventeenth day of August, at 1 o'clock p. m.

SATURDAY, *August* 17*th*, 1878, 1 *p. m.*

Present: The Commissioner; John S. Fish.

Examination of Mr. Fish.

Interrogatory first. What is your name, age, occupation, and residence?

Ans. My name is John S. Fish; age, 70 last birthday; residence, No. 1024 Melon street; occupation, contractor.

Interrogatory second. How far from Denver, Colorado, do you reside?

Ans. I suppose in the neighborhood of 2,000 miles.

Interrogatory third. Have you the possession of the bond
215 set up in the bill and amended bill of complainants for thirty-
four thousand dollars, to be discharged by the payment of
seventeen thousand dollars, interest, &c., dated 22d August, 1870? If so, file the same with your deposition and mark it so as to identify it.

Ans. I have not the possession of the bond spoken of, but it has been handed to me by the commissioner; this has already been marked by the commissioner Exhibit "A."

It is dated August 22d, 1870, and I recognize it as the bond executed on that day, and I mark it with my initials, "J. S. F.," for identification; and desire the same to be taken as part of my deposition. I know the signatures of the parties to this paper.

Interrogatory fourth. If you have the mortgage executed by The Fairmount Gold and Silver Mining Company to Thomas Hare and Jonathan H. Pugh, trustees, dated 22d August, 1870, to secure the payment of said seventeen thousand dollar bond and interest, please file the same in your deposition and identify it by some mark.

Ans. I have not the mortgage executed by the Fairmount Gold and Silver Mining Company to Thomas Hare and Jonathan H. Pugh of date August 22, 1870, but the same being shown me I
recognize it as the mortgage created and executed on that
216 date for the purposes therein mentioned, and I mark it with
my initials, "J. S. F.," for identification, and I desire the
same to be taken as part of my deposition. I know the signatures of the parties to this paper. This paper has already been marked by the commissioner Exhibit "B."

Interrogatory fifth. Are or are not said bond and mortgage the same identical bond and mortgage set up and referred to in the original and amended bills of complainants in this suit?

Ans. They are.

Interrogatory sixth. State whatever you may know as to what debts of said Fairmount Gold and Silver Mining Company were secured, or intended to be secured, by the parties at the time the bond and mortgage were executed; please be explicit in giving the
ames of the creditors, and amount of the debts secured by the bond
ıd mortgage; file a list of the claims, showing names, dates, and
nounts, and mark it for identification.

Ans. I recognize the list now handed me, showing what debts
the Fairmount Gold and Silver Mining Company were secured
intended to be secured by the bond and mortgage at the time
e said instruments were executed on a list now filed with the
mmissioner, the names of the creditors, and dates, and amounts

of the debts secured by the bond and mortgage appear, I
217 mark this list with my initials, "J. S. F.," for indentification,
which list has already been marked by the commissioner
Exhibit "C," I desire it to be taken as part of my deposition; this is taken from the books of the company.

Interrogatory seventh. If you give names, dates, and amounts in answer to the last question, then give your knowledge as to the correctness of the same, and tell how you know that said debts were embraced in and covered by and intended to be secured by the seventeen thousand dollar bond and mortgage?

Ans. I have knowledge as to the correctness of the names, dates, and amounts as set out on Exhibit "C," which is part of my answer to the last question; Exhibit "C" is copied from the books of the company, and is an exact transcript of the same; I know that the said debts are embraced in and secured by the seventeen thousand dollar bond and mortgage; I was present at the meeting of the stockholders of the company, held June 16, 1868, when the bond and mortgage was authorized to be created for the security of the indebtedness of the company prior to the date of the bond and mortgage, which was for money previously borrowed; this more fully appears in an abstract of the legislation of the meeting of the stockholders and directors, marked by the commissioner Exhibit
"D," and I now mark it with my initials, "J. S. F.," for
218 identification; at the time of the creation of the bond and
mortgage I was a director as well as a stockholder, and the
bond and mortgage was created for the security of the then existing indebtedness due by the company to various parties for borrowed money; I have a very distinct recollection as though it occurred but yesterday: Thomas Hare and Jonathan H. Pugh were made trustees in said mortgage.

Interrogatory eight. If any debts were secured by said bond and mortgage created after the date of said mortgage, name the parties, and give dates and amounts, and your means of knowing.

Ans. There were no debts secured by the bond and mortgage created after the date of said mortgage; I am positive of this, because at the time the bond and mortgage were created I was a stockholder and director of the company; I am a stockholder yet, but my connection with the board of directors ended January 15, 1875; I took an active part in the business transactions and am familiar with the transactions of the board of directors up to the time I served my connection with the same, and equally familiar with the legislation of the stockholders.

Interrogatory ninth. In your answer to the sixth interrogatory, do you or do you not mean to say that no other debts were secured
by the bond and mortgage than those named by you in your
219 answer to the sixth interrogatory?

Ans. I mean to say there were no other debts secured by the bond and mortgage than those I have already named in my answer to the sixth interrogatory.

Interrogatory tenth. State whatever you may know as to those debts created by the Fairmount Gold and Silver Mining Company *subsequent* to the date of the bond and mortgage aforesaid being secured or intended to be secured by the said bond and mortgage, and your means of knowing?

Ans. There were no debts created by the Fairmount Gold and Silver Mining Company, subsequent to the date of the bond and mortgage, which were secured or intended to be secured by said bond and mortgage, and my means of knowing are, that I was a stockholder, and am up to the present time, and was a director at the time said mortgage was created on August 22, 1870, and continued as such up to January 15th, 1875; I am at present a stockholder and bondholder of the company, and am familiar with the legislation of the board of directors of the company that was transacted while I was a member of the same, and all the legislation of the stockholders.

Interrogatory eleventh. If you have the possession of the notes executed by the Fairmount Gold and Silver Mining Company, which
were delivered to the payees or creditors of the company, and
220 which notes were covered and secured by the aforesaid bond
and mortgage; you will please file them with your deposition, and give a list of them, showing names, dates, and amounts, so marked as to be identified as part of your deposition?

Ans. I have not possession of the notes executed by the said Fairmount Gold and Silver Mining Company, which were delivered to the payees or creditors of the company, and which notes were covered and secured by the aforesaid bond and mortgage, but I observe they are here, and I recognize them as being the same notes or certificates of indebtedness, secured or intended to be secured by the bond and mortgage; I recognize them by the signatures of the president and secretary, with whose handwriting I am familiar. The commissioner hands me a list of them showing names, dates, and amounts, which I mark with my initials, "J. S. F.," for identification, and which has already been marked Exhibit "E," and I desire it to be taken as a part of my deposition.

Interrogatory twelfth. If you know the amount of indebtedness of the company to one John W. Thackara, you will please state the amount; when and how created; and if any note or notes were executed and delivered to him, then give the dates and amounts of the same, and explain the same fully; and, if paid, how and when, and by whom; were they sued upon; if so, when, where, and by whom?

Ans. I know the amount of the indebtedness of the company to one John W. Thackara, and am now shown by the commissioner a list already marked Exhibit "F," and which I now identify with my initials, "J. S. F." This list shows the amounts and dates of of the same, and is a correct copy taken from the books of the
company. Two of the notes specified in this exhibit,
221 namely, note December 31, 1871, for ten thousand dollars;

note April 17, 1872, for seventeen hundred and eighty-nine and $\frac{50}{100}$ dollars; one note given by the company to John W. Thackara for back salary, and to be paid when the profits of the company would guarantee such payment; also two of the notes specified in this exhibit, namely, note April 3d, 1872, for thirty dollars, and note April 3d, 1872, for twenty dollars, are notes given by the company to John W. Thackara for fifty per centum of the stock of the company which he purchased from the company, and are known as drawback notes, and to be paid by the company out of the first profits. There never has been any profits realized by the company since the organization of said company. The indebtedness was created by the execution and delivery of the notes mentioned in Exhibit "F" to him, and were created under the legislation of the company. Abstract of such legislation are now here, and which I give to the commissioner, and mark them "J. S. F." for identification, and to be taken as part of my deposition.
This paper has already been marked by the commissioner Ex-
222 hibit "G." This is taken from the minute book of the com-
pany. The notes have not been paid, but were sued upon by John W. Thackara on the 22d day of March, 1873, in the district court of the second judicial district of the Territory of Colorado, in an action which he brought against "The Fairmount Gold and Silver Mining Company."

Interrogatory thirteenth. State whatever you may know as to the indebtedness of said Fairmount Gold and Silver Mining Company to one Abram C. Brown; when and how created; when and how paid; if paid, to whom Brown assigned said indebtedness; and if sued upon, by whom, when, and what court; tell all you may know about the same, and how you know it?

Ans. I know the indebtedness of the Fairmount Gold and Silver Mining Company to Abram C. Brown, and I am now shown by the commissioner a list of said indebtedness, and mark it with my initials, "J. S. F.," for identification. This list has already been marked Exhibit "H." This is a correct list from the books of the company. Five of the notes specified in the exhibit, namely, August 5th, 1868, to Abram C. Brown for two hundred and fifty dollars; note March 2, 1869, to Abram C. Brown for three hundred and thirty-three and $\frac{33}{100}$ dollars; note July 6, 1869, to Abram C. Brown for one hundred and eighty-three and $\frac{33}{100}$ dollars; note
October 9, 1869, to Abram C. Brown for six hundred and
223 eighty dollars; note March 31, 1870, to Abram C. Brown
for three hundred and fifty and $\frac{69}{100}$ dollars, are notes given by the company to Abram C. Brown for borrowed money. These notes are secured by the bond and mortgage. Five of the notes specified in this exhibit, namely, note April 30, 1872, to Abram C. Brown for sixty dollars; note May 24, 1872, to Abram C. Brown for twenty-five dollars; note July 2, 1872, to Abram C. Brown for one hundred and ninety dollars; note August 15, 1872, to Abram C. Brown for five hundred dollars; August 28, 1872, to Abram C.

Brown for two hundred and fifty dollars, are notes given by the company to A. C. Brown for fifty per centum of the stock of the company which he purchased from the company, and are known as drawback notes, and to be paid by the company from first profits. There has been been no profits realized by the company since the organization.

The debts were created at the time mentioned in exhibit which is marked Exhibit "H," and which I mark, "J. S. F.," for identification, and were created under legislation of the company, which is fully set forth in Exhibit "D" in my answer to the seventh interrogatory, and in Exhibit "G" in answer to the twelfth interrogatory. The debts have not been paid, and were assigned by Abram C. Brown to John W. Thackara. The evidences of indebtedness
were sued upon by John W. Thackara in an action brought
224 by him against the Fairmount Gold and Silver Mining Com-
pany on the 22d day of March, 1873, in the district court of the second judicial district of the Territory of Colorado. My knowledge of this is that at the time mentioned, 22d day of March, 1873, I was a director of the company, and familiar with its business.

Without concluding the examination of the witness, the meeting adjourned to meet on Monday, the 19th day of August, 1878, at 1 o'clock p. m.

MONDAY, *August 19th*, 1878, 1 p. m.

Present: The Commissioner; Jacob S. Fish.

Examination of Mr. Fish Resumed.

Interrogatory fourteenth. If you know of any indebtedness on the part of said company to J. P. Harker, then tell all about it; the amount thereof, when created, how created, how settled, by note, or otherwise; if assigned by Harker, to whom; if suit was brought, by whom, and when; and explain the whole matter, and your means of knowing?

Ans. I have knowledge of the indebtedness of the Fairmount Gold and Silver Mining Company to John P. Harker; it amounts
to twenty dollars; it was created May 17, 1869, under the
225 legislation of the company, as appears in Exhibit "D" in
my answer to the seventh interrogatory, which I have already marked with my initials, and a note was given by the company for it, which note was assigned by John P. Harker to John W. Thackara, and made part of the foundation of the suit of the said Thackara against the Fairmount Gold and Silver Mining Company, on the 22d day of March, 1873; I was a director of the company, and familiar with its business; this is taken from the books of the company.

Interrogatory fifteenth. If you have any knowledge of any indebtedness of said company to one Swain Thackara, then tell all you may know about it; giving dates, amounts, how and when created; if transferred, to whom; if sued on, by whom, and when?

Ans. I know of the indebtedness of the Fairmount Gold and Silver Mining Company to Swain Thackara; it amounts to one hundred dollars, and was created April 12, 1869, under and by the authority of the legislation of the company, as fully appears in Exhibit "D" in my answer to the seventh interrogatory, and a note given for it at that date; the note was transferred by Swain Thackara to John W. Thackara, his brother, and was made part of the foundation of a suit of John W. Thackara against the Fairmount Gold and Silver Mining Company, 22d day of March, 1873; this is taken from the books of the company; of this I am satisfied.

226 Interrogatory sixteenth. If you have any knowledge as to whether any of the debts due from said company to John W. Thackara, Abram C. Brown, J. P. Harker, and Swain Thackara, above described and spoken of, were secured by said bond and mortgage, you will please describe fully and clearly which of them, giving names, dates, and amounts, *are thus secured*, and which were *not thus secured*, and your means of knowing?

Ans. I have knowledge as to the debts due by the company, which were secured by the bond and mortgage; I will now describe them by referring to a list which the commissioner has marked Exhibit "I," and which I mark with my initials, "J. S. F.," for identification, and which is taken from the books of the company, which sets them out in full, and gives names, dates, and amounts of those secured; I also hand to the commissioner a list of those not secured by the mortgage, which gives dates as well as amounts of the same, which I find marked "K" by the commissioner, I mark it with my initials, "J. S. F.," for identification; this is taken from the books of the company; my means of knowledge arises in this *was*, I was at the time of the creation of the mortgage, August 22, 1870, stockholder and director of the company, and being largely interested, I familiarized myself with the legislation of the board of directors of the company, as well as that of the stockholders, and have a

227 very distinct recollection of all business transactions.

Interrogatory seventeenth. State whatever you may know as to the knowledge of said John W. Thackara that the bond and mortgage aforesaid were executed, and for what purpose they were executed, what debts were or were not secured by them, and tell all you may know about it, and give your means of knowing, as well as Thackara's means of knowing?

Ans. In the beginning of March, 1871, John W. Thackara came on to Philadelphia from Colorado, and in frequent conversations with me he said that he had heard of the existence of a bond and mortgage, which the company had created, and which had been entered of record at Georgetown, Clear Creek county, Colorado, before he left that Territory, amounting to seventeen thousand dollars; he asked me why it was created, and for what purpose, when he, Thackara, was informed by me, as one of the board, that the

purposes and object of the company were to secure the parties who came forward and loaned money to the company, and who insisted upon having their interest secured; the moneys were loaned to the company by various parties anterior to the execution of said
228 bond and mortgage, and which parties held the evidences of indebtedness for said borrowed money; the bond and mortgage was created for no other purpose than as a security for moneys borrowed by the company from various parties, prior to the date of said mortgage; my knowledge of the facts above stated arises from the fact that I was a stockholder and director of the company, and took an interest in the same, and familiarized myself with the legislation and business of said company; John W. Thackara's knowledge of the facts that the bond and mortgage was created for the purpose first stated, arises in this way: He had many conversations with me and the president of the company, with reference to the same, as well as other directors, at the place of business of the president, and at the meetings of the directors of the company, as well as at the meetings of the stockholders; he attended these meetings sometimes, looking at the books of the company at the house and store of the president; that courtesy was always extended to him, he being general agent at the time, as well as a stockholder.

Interrogatory eighteenth. State whatever you may know as to whether the indebtedness of said company to the sundry creditors named in the answer and list filed with sixth interrogatory is *bona fide* or not, or due and owing by the company at the time of the commencement of this suit and since?

229 Ans. The indebtedness of the company to the creditors mentioned in my answer to the sixth interrogatory, and as set forth in the list filed therein and marked with my initials, that is to say, Exhibit "C," is *bona fide*, and was due and owing by the company at the time: I have no personal knowledge since my retirement from the board that any of the debts have been paid to others. I know that mine have not.

Interrogatory nineteenth. Will you please give a list of the debts due from said company for which this suit was brought which are *bona fide*, due, owing, and unpaid and secured by the mortgage aforesaid, and also your means for knowing?

Ans. I cannot answer this interrogatory but in part, as I retired from the board January 15, 1875; but I now find before me a list showing the debts due from the said company, and mark it with my initials, "J. S. F." and the commissioner marks it Exhibit "L," it is identical with Exhibit "C," which is a part of my answer to the sixth interrogatory, which is taken from the books of the company. The debts are *bona fide*. I have no personal knowledge as to whether any have been paid. I know those due me have not and are secured by the mortgage. My means of knowing are that I know of the creation of the bond and mortgage for the pur-
230 poses of such security, because I was at a meeting of the stockholders when it was done; I also know of the selection

by the board of directors of Thomas Hare and J. H. Pugh as trustees for the execution of said bond and mortgage according to the intention of the creation, as fully set forth in Exhibit "D" in my answer to the seventh interrogatory, I being present at the meeting of the board at that time.

Interrogatory twentieth. Were, or were not, any or all of the notes on said company, upon which John W. Thackara brought suit in Clear Creek county, Colorado, secured by said bond and mortgage; if so, state which were and which were not secured? Be explicit and give source of your knowledge.

Ans. Some of the notes of said company, upon which John W. Thackara brought suit in Clear Creek county, Colorado, were secured by bond and mortgage. Some were not. I now hand to the commissioner a list showing which were secured by the bond and mortgage, and is marked Exhibit "M," and I mark it with my initials, "J. S. F.," for identification, and to be taken as part of my deposition. This is taken from the books of the company. I also hand to the commissioner a list showing which debts were not secured by the bond and mortgage, and which formed in part the foundation of the suit of John W. Thackara against the
231 company. This list has been marked Exhibit "N" by the commissioner, and I mark it "J. S. F." for identification, and to be taken as part of my deposition. This is taken from the books of the company. My source of knowledge is that I was a stockholder and director of the company when the evidences of indebtedness were created, and familiar with the legislation and business of the said company.

Interrogatory twenty-first. At whose instance, or by whose order or request, was this suit brought?

Ans. At my own request, as one of the bondholders.

Interrogatory twenty-second. State whatever you may know as to the indebtedness of said company to Thomas Hare and Jonathan H. Pugh; how created; when created; if settled, by note, or otherwise; whether the same is now just, due, and unpaid, in whole or part: explain fully all you know about said indebtedness.

Ans. I know the indebtedness of said company to Thomas Hare and J. H. Pugh. I have before me a list of said indebtedness, and mark [it] "J. S. F." for identification. The commissioner has marked it "O" for identification. This was taken from the books of the company. The debts were created at the dates mentioned therein. The commissioner now shows me a list marked Exhibit "O 1," and I now mark it with my initials, "J. S. F.," for
232 [identification.] This was also taken from the books of the company. This [is] a list of the indebtedness of the company to Jonathan H. Pugh. The debts were created at the dates mentioned therein, under and by virtue of the legislation of the company, as fully appears in Exhibit "D" in my answer to the seventh interrogatory. The debts were settled by notes, which appear on the list filed with their answer. I have no personal

knowledge that any have been paid, not being a member of the the board since January 15th, 1875. I do know that my notes, or certificates of indebtedness, have not been paid.

Interrogatory twenty-third. Have Hare and Pugh, as trustees, or individually, brought any other suit, at law, or in equity, in Colorado or other place, on the indebtedness of the company, secured by said bond and mortgage; if so, when and where?

Ans. I have no personal knowledge that either Thomas Hare or Jonathan H. Pugh, as trustees, have commenced any other suit, in law or equity, in Colorado or elsewhere, on the indebtedness of the company, secured by said bond and mortgage.

Interrogatorry twenty-fourth. What means of knowledge had John W. Thackara as to the execution of the bond and mortgage aforesaid and the purpose and object of the same, his opportunities of knowing, his access to the books and proceedings of the
233 company, its meetings, and what official capacity did he occupy to the company? Be explicit and tell all about it.

Ans. I have made full answer to this interrogatory in my answer to the seventeenth interrogatory, but I have this to say, in addition, that about March, 1871, or a little after, John W. Thackara, in conversation with myself and other directors of the company, frequently referred to the execution of the bond and mortgage, the purposes and object of the same, and he clearly understood that it was to protect those from whom the company had borrowed money; his opportunities for knowing were complete, and in addition to this he had at all times access to the books and accounts of the company.

Interrogatory twenty-fifth. If you know anything else material to the parties herein touching this case, you will please state it and give your means of information and knowledge.

Ans. I know nothing further.

Interrogatory twenty-sixth. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause; if yea, set forth the same fully and at large in your answer.

Ans. On exhibit "C," in my testimony to the sixth inter-
234 rogatory, there is shown to be a debt due by the company as follows: It is a certificate, No. 95, to John R. Brownholtz, being dated December 2d, 1870, for sixty-six and $\frac{66}{100}$ dollars; this note was given by the company, as the date sets forth, after the mortgage was created; this note was secured to John R. Brownholtz for money borrowed from him by the company; the debt was reated prior to the execution of the bond and mortgage, and was ally intended to be secured by said bond and mortgage, and was represented to Brownholtz at the time it was so secured. I otice that there is filed with the commissioner a list of the indebt-dness of the company to be secured by the bond and mortgage; it as been marked Exhibit "P" by the commissioner, and I put my

initials, "J. S. F.," upon it for identification. This exhibit is divided into three classes. I recognize it as being correct as a statement from the books of the company, which I am familiar with, being a member of the board when the transactions took place. This exhibit is identical with Exhibit "C," as seen by my evidence to sixth interrogatory, with this exception, that this exhibit is divided into classes. There is also a paper marked Exhibit "Q," and which I mark it with my initials, "J. S. F," for identification. It is an agreement between the Fairmount Gold and Silver Mining Company and Thomas Hare and J. H. Pugh, in trust for the 235 uses and purposes therein mentioned. Said agreement was authorized and decided to be executed while I was a member of the board, defining the duties of the trustees with reference to the mortgage created for seventeen thousand dollars, dated August 22d, 1870. I am acquainted with the handwriting of the parties therein named.

Cross-interrogatories and answers thereto by the witness, JACOB S. FISH, on the part of the complainant:

Cross-interrogatory first. If, in answer to the fifth direct interrogatory, you say that the bond and mortgage testified to by you are the same mentioned in original and amended bills of complaint herein, state how you know they are the same, and how you know what bond and mortgage are described in said original amended bills?

Ans. The bond and mortgage testified to by me, in answer to the fifth direct interrogatory, are the same as are mentioned in the original and amended bills of complainants; my knowledge of the facts are the same that it is. I was present at a meeting, held on the 16th day of June, 1868, of the stockholders; at that time the bond and mortgage were ordered to be created; I was also present at a meeting of the board of directors, held on the 19th of August, 1870, subsequent thereto; at which meeting a bond and mortgage were approved. Thomas Hare and Jonathan H. Pugh were selected as trustees for the purpose of carrying out the intentions of the 236 creations of said bond and mortgage, as clearly set out in Exhibit "Q," in my evidence to the twenty-sixth direct interrogatory.

Cross-interrogatory second. If, in answer to the sixth direct interrogatory, you say you know what debts were secured by the Fairmount Gold and Silver Mining Company by the bond and mortgage, state explicitly what each and every of such debts were, and give the date that each was contracted, the amount of the same; state what, if any, evidence of indebtedness such creditors had, and attach a copy of such instruments to your answer; also, state how you know such indebtedness, and each of them, were secured by such bond and mortgage, and it you were furnished, as trustees, at the time of the execution of such bond and mortgage, with a schedule or list of the indebtedness secured by such bond and mortgage; attach a copy hereto as an exhibit to your answer; and if in answer to same interrogatory you attempt to state what indebtedness was *intended* to be secured by such bond and mortgage, state fully how you know and your means of information; state the same fully?

In my answer to the sixth direct interrogatory I handed to the commissioner Exhibit "C," showing all the debts that were intended to be secured for money borrowed; I have marked this list
237 with my initials "J. S. F." as part of my answer to the sixth
interrogatory, and it sets forth explicitly what each and every one of such debts were, and the dates that each were contracted, and the amounts of the same; in my answer to the eleventh interrogatory I file with the commissioner Exhibit "E" and I mark it "J. S. F.," it is a list showing the evidences of indebtedness which the creditors of the company had for the money which had been borrowed from various individuals; I know that each of them were secured by the bond and mortgage; I know this, because I was present at a meeting of the board of directors of the company when the bond and mortgage was created for the security of the then existing indebtedness of the company for money which it had borrowed from various individuals; the commissioner has a list of the indebtedness secured by said bond and mortgage; the list is identical with Exhibit "C," and which I have already marked "J. S. F.," and which I make part of my answer to the 6th direct interrogatory; my knowledge as to what indebtedness was intended to be secured by the bond and mortgage is in this way, that I was present at a meeting of the stockholders when said bond and mortgage was authorized to be created; subsequently, at a meeting of the board of directors, of which I was one, at which said bond and mort-
238 gage was created, and the main object of its creation was for
the security of the pre-existing indebtedness of the company for money borrowed; my recollection upon that point is very clear.

Cross-interrogatory third. If, in answer to the eighth direct interrogatory, you say that said bond and mortgage were made to secure debts thereafter to be created, state how you know the same, and mention each and every of such debts, and what action was taken by The Fairmount Gold and Silver Mining Company to indicate that such bond and mortgage were made to secure debts to be created thereafter.

Ans. In the answer I made to the eighth direct interrogatory I testified there were no debts secured by the bond and mortgage which were created after the date of said bond and mortgage, which was August 22d, 1870, and my means of knowing this fact is that at the time the bond and mortgage was created I took an atcive part as a stockholder and director of the company, and I familiarized myself with the legislation of the board of directors of the company as well as the legislation of the stockholders, and have a clear and distinct recollection of what occurred in connection therewith.

Cross-interrogatory fourth. If in answer to direct interrogatories you give a list of all the indebtedness in full that such bond

239 and mortgage were given to secure, and say that such indebtedness was evidenced by notes or any written acknowledgment, state how many and which of said notes or evidences of indebtedness were paid in any manner by The Fairmount Gold and Silver Mining Company, or exchanged for the stock of said company, and also state why such notes or evidences of indebtedness were not cancelled, and how they came again to be issued; also, state who now are or claim to be the owners of each and every of such notes or evidences of indebtedness, and how they came into the possession of such persons.

Ans. None of the notes or evidences of indebtedness were paid by The Fairmount Gold and Silver Mining Company, nor were they paid by the trustees; some of the notes secured by the bond and mortgage were exchanged by the holders of the same into stock of the company, conditionally, under and by virtue of the legislation of the board of the directors of the company; an abstract of which legislation, taken from the books of the company, I now make a part of my answer, and mark it with my initials, J. S. F., for identification; the commissioner has already marked it Exhibit "R;" the notes were not cancelled, because *because* they were exchanged or converted conditionally, as set forth in Exhibit R, which I make a part of my answer to this cross-interrogatory; the notes were not reissued, and the notes which appear in Exhibit "E" in my answer to the eleventh direct interrogatory are the orig-
240 inal notes issued by the company to the parties named therein
for money borrowed by the company from various individuals; the parties named in the notes or evidences of indebtedness claim to be and are the *bona fide* owners of them under the provisions of the legislation of the company as are already set forth in Exhibit "R" in my evidence given to this cross-interrogatory, and they demand a right under the mortgage, and request that the trustees pursue and enforce such rights; I know that Thomas Hare and Jonathan H. Pugh have possession of the notes, as will more fully appear in Exhibit "E" in answer to the eleventh direct interrogatory.

Cross-interrogatory fifth. If you say that any of the indebtedness of The Fairmount Gold and Silver Mining Company was taken up and satisfied, either by exchange of the same for the stock of the company or in any other manner, give a full and complete bill of all the debts so paid either by stock or in any other manner, and a full and complete list of each and every of the said company not taken in and paid.

Ans. None of the indebtedness of The Fairmount Gold and Silver Mining Company was taken up and satisfied, either by the company or trustees. I stated in my answer to the fourth cross-interrogatory that some of the notes of the company issued to various parties were for money borrowed; were exchanged or converted into
241 stock of the company upon the express condition that all the
holders of such notes for borrowed money would exchange

or convert the same into the stock of the company within ten days; all holders did not exchange or convert; and those who did, claim a release from such exchange or conversion, as the conditions of the legislation of the company, under which it was done, was not complied with; and I with others requested the commencement of this suit. I now mark with my initials, "J. S. F.," a list, which the commissioner has, embracing those debts for borrowed money which were exchanged for the stock of the company. It has been marked by the commissioner as I see Exhibit "S" ior identification. I also mark a list which has been handed to the commissioner with my initials, embracing the debts for borrowed money which were not exchanged for the stock of the company, and which has already been marked by the commissioner Exhibit "T" for identification. This is taken from the books of the company.

(S'g'd) J. S. FISH.

Sworn and subscribed to before me, this nineteenth day of August, A. D. 1878.

(S'g'd) CHAS. T. CLARK,
U. S. Com'r.

The meeting adjourned to meet on Tuesday, the 20th day of August, A. D. 1878, at one o'clock.

242 AUGUST *20th*, 1878.

Present: The Commissioner.

On account of the inability of the witness, Mr. Clinger, to be present, the meeting adjourned to August 23, 1878, at 11 o'clock a. m.

AUGUST *23d*, 1878, 11 A. M.

Present: The Commissioner and Wm. N. Ashman.

Examination of William N. Ashman.

Interrogatory first. What is your name, age, occupation, and residence?

Answer. William N. Ashman; I am about forty-five years of age; am by occupation a lawyer; and reside at No. 3510 Lancaster ave., in the city of Philadelphia.

Interrogatory second. How far from Denver, Colorado, do you reside?

Answer. I don't know; I suppose it is about two thousand miles.

Interrogatory third. Have you the possession of the bond set up in the bill and amended bill of complainants for $34,000 (thirty-four thousand dollars), to be discharged by the payment of seventeen thousand dollars ($17,000), interest, &c., dated 22d August, 1870?
243 If so, file the same with your deposition, and mark it so as to identify it.

Answer. I have not. [Paper marked Exhibit "A" having been shown witness, he identifies it as the bond of the Fairmount Gold and Silver Mining Company to Thomas S. Hare and Jonathan

Pugh for $34,000, and says:] I mark it with my initials, "W. N. A," for identification. My name, as witness to the bond, is in my own handwriting.

Interrogatory fourth. If you have the mortgage executed by the Fairmount Gold and Silver Mining Company to Thomas S. Hare and Jonathan H. Pugh, trustees, dated 22d August, 1870, to secure the payment of said seventeen thousand dollar ($17,000) bond and interest, please file the same in your deposition and identify it by some mark.

Answer. I have not the mortgage, but the mortgage now produced from the Fairmount Gold and Silver Mining Co. to Thos. Hare and Johnathan H. Pugh, and marked Exhibit B, C. P. C., U. S. Com'r, was witnessed by me, and my signature thereto as witness is in my own handwriting, and I identify it by my initials, "W. N. A.," on the back thereof.

Interrogatory fifth. Are or are not said bond and mortgage the same identical bond and mortgage set up and referred to in the original and amended bills of complainants in this suit?

Answer. I have no knowledge on this point.

244 Interrogatory sixth. State whatever you may know as to what debts of said Fairmount Gold and Silver Mining Company were secured, or "intended" to be secured, by the parties at the time the bond and mortgage were executed. Please be explicit in giving the names of the creditors and amount of the debts secured by the bond and mortgage; file a list of the claims, showing names, dates, and amounts; mark it for identification as part of your deposition?

Answer. I have no knowledge whatever on the points inquired of in this interrogatory.

Interrogatory seventh. If you give names, dates, and amounts in answer to the last question, then give your knowledge as to the correctness of the same, and tell how you know that said debts were embraced in, covered by, and intended to be secured by the seventeen thousand dollar bond and mortgage?

Answer. I have no knowledge on this point.

Interrogatory eighth. If any debts were secured by said bond and mortgage *created after* the date of said mortgage, name the parties, and give dates and amounts, and your means of knowing?

Answer. I know nothing on these points.

Interrogatory ninth. In your answer to sixth interrogatory, do you or do you not mean to say that no other debts were secured by the bond and mortgage than those named by you in your answer to the sixth interrogatory?

Answer. I have no knowledge on this point.

245 Interrogatory tenth. State whatever you may know as to those debts created by the Fairmount Gold and Silver Mining Company *subsequent* to the date of the bond and mortgage aforesaid being secured, or intended to be secured, by the said bond and mortgage, and your means of knowing.

Answer. I know nothing on this point.

Interrogatory eleventh. If you have the possession of the notes executed by said Fairmount Gold and Silver Mining Company, which were delivered to the payees or creditors of said company, and which notes were covered and secured by the aforesaid bond and mortgage, will you please file them with your deposition and give a list of them, showing the names, dates, and amounts, so marked as to be identified as a part of your deposition?

Answer. I have no such notes, and have no knowledge with regard to them.

Interrogatory twelfth. If you know the amount of indebtedness of the company to one John W. Thackara, you will please state the amount, when and how created, and if any note or notes were executed and delivered to him, then give the dates and amounts of the same, and explain the same fully; and if paid, how, and when, and by whom; were thay sued upon; if so, when, where, and by whom?

Answer. I know nothing with regard to the matters inquired of in this interrogatory.

246 Interrogatory thirteenth. State whatever you may know as to the indebtedness of said Fairmount Gold and Silver Mining Company to one Abram C. Brown; when and how created; when and how paid; if paid, to whom Brown assigned said indebtedness; and if sued upon, by whom, when, and what court; tell all you may know about the same, and how you know it?

Answer. I know nothing.

Interrogatory fourteenth. If you know of any indebtedness on the part of the said company to J. P. Harker, then tell all about it; the amount thereof, when created, how created, how settled, by note or otherwise; if assigned by Harker, to whom; if suit was brought, by whom, and when, and explain the whole matter, and your means of knowing?

Answer. I know nothing.

Interrogatory fifteenth. If you have any knowledge of any indebtedness of said company to one Swain Thackara, then tell all you may know about it, giving dates, amounts, how and when created; if transferred, to whom; if sued on, by whom, and when?

Answer. I know nothing.

Interrogatory sixteenth. If you have any knowledge as to whether any of the debts due from said company to John W. Thack-
247 ara, Abram C. Brown, J. P. Harker, and Swain Thackara, above described and spoken of, were secured by said bond and mortgage, you will please describe fully and clearly which of them; giving names, dates, and amounts *are thus secured*, and which were *not thus secured*, and your means of knowing?

Answer. I have no knowledge whatever on these points; I have no means of knowing.

Interrogatory seventeenth. State whatever you may know as to the knowledge of said John W. Thackara, that the bond and mortgage aforesaid, were executed, and for what purpose they were executed; what debts were or were not secured by them, and tell all you may know about it, and your means of knowing, as well as Thackara's means of knowing?

Answer. I know nothing as to the matters here inquired of.

Interrogatory eighteenth. State whether you may know as to whether the indebtedness of said company to the sundry creditors named in the answer, and list filed, to sixth interrogatory, is *bona fide* or not, or due and owing by the company at the time of the commencement of this suit, and since?

Answer. I know nothing on these points.

Interrogatory nineteenth. Will you please give a list of the debts
due from said company, for which this suit was brought, which
are *bona fide*, due, owing, and unpaid, and secured by the
248 mortgage aforesaid, and also your means of knowing?

Answer. I have no knowledge on this point and no means of knowing.

Interrogatory twentieth. Were or were not any or all of the notes on said company, upon which John W. Thackara brought suit in Clear Creek county, Colorado, secured by said bond and mortgage; if so, state which were and which were not secured? Be explicit and give source of your knowledge.

Answer. I have no knowledge on this point.

Interrogatory twenty-first. At whose instance, or by whose order or request, was this suit brought?

Answer. I do not know.

Interrogatory twenty-second. State whatever you may know as to the indebtedness of said company to Thomas Hare and Jonathan H. Pugh, how created, when created, if settled by note or otherwise, whether the same is now just, due, and unpaid in whole or in part? Explain fully all you know about said indebtedness.

Answer. I know nothing on this point.

Interrogatory twenty-third. Have Hare and Pugh, as trustees, or individually, brought any other suit at law or in equity in Colorado or other place, on the indebtedness of the company secured by said bond and mortgage; if so, when and where?

Answer. I know nothing on this point.

Interrogatory twenty-fourth. What means of knowledge
249 had John W. Thackara as to the execution of the bond
and mortgage aforesaid, and the purpose and object of the same, his opportunities of knowing, his access to the books and proceedings of the company, its meetings, and what official capacity did he occupy to the company? Be explicit and tell all about it.

Answer. I know nothing on this point.

Interrogatory twenty-fifth. If you know anything else material to the parties herein touching this case, you will please state it and give your means of information and knowledge?

Answer. I know nothing.

Interrogatory twenty-sixth. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I know nothing material to this cause. I was employed by Thomas J. Ashton, Esq., who was counsel for one or more of the parties, but I do not now remember whom, to draw up the bond and mortgage which I have identified, and also an agreement now produced before me between the Fairmount Gold and Silver
250 Mining Company and Thomas Hare and Jonathan H. Pugh, marked Exhibit "Q," C. P. C., U. S. Com'r, and which I have identified with my initials. These papers were drawn up in accordance with instructions furnished by Mr. Ashton, and I acted simply as his conveyancer in the matter.

Cross-interrogatories and answers thereto by the witness, WILLIAM N. ASHMAN, on the part of complainants:

Cross-interrogatory first. If, in answer to the fifth direct interrogatory, you say that the bond and mortgage testified to by you are the same mentioned in original and amended bills of complaint herein, state how you know they are the same, and how you know what, bond and mortgage are described in said original and amended bills?

Answer. I do not know that they are the same.

Cross-interrogatory second. If, in answer to the sixth direct interrogatory, you say you know what debts were secured by the Fairmount Gold and Silver Mining Company by the bond and mortgage; state explicitly what each and every of such debts were and give the date that each was contracted—the amount of the same; state what, if any, evidence of indebtedness such creditors had, and attach a copy of such instruments to your answer;
251 also state how you know such indebtedness, and each of them, were secured by such bond and mortgage, and if you were furnished, as trustees, at the time of the execution of such bond, and mortgage with a schedule or list of the indebtedness secured by such bond and mortgage; attach a copy hereto as an exhibit to your answer, and, if in answer to the same interrogatory you attempt to state what indebtedness was *intended* to be secured by such bond and mortgage, state fully how you know, and your means of information; state the same fully.

Answer. I have no knowledge whatever on these points.

Cross-interrogatory third. If, in answer to the eighth direct interrogatory, you say that said bond and mortgage were made to secure debts thereafter to be created, state how you know the same, and mention each and every of such debts, and what action was taken by the Fairmount Gold and Silver Mining Company to indicate that such bond and mortgage were made to secure debts to be created thereafter?

Answer. I know nothing upon this point.

Cross-interrogatory fourth. If, in answer to direct interrogatories, you give a list of all the indebtedness in full that such bond and mortgage were given to secure, and say that such indebtedness was evidenced by notes or any written acknowledgment, state 252 how many and which of said notes or evidences of indebtedness were paid in any manner by the Fairmount Gold and Silver Mining Company, or exchanged for the stock of said company, and also state why such notes or evidences of indebtedness were not cancelled, and how they came again to be issued; and also state who now are, or claim to be, the owners of each and every of such notes or evidences of indebtedness, and how they came in the possession of such persons?

Ans. I know nothing as to these facts.

Cross interrogatory fifth (5.) If you say that any of the indebtedness of the Fairmount Gold and Silver Mining Company was taken up and satisfied, either by exchange of the same for the stock of the company, or in any other manner, give a full and complete bill of all the debts so paid, either by stock or in any other manner, and a full and complete list of each and every debt of the said company not taken in and paid.

Ans. I know nothing of the matter.

(Signed) W. N. ASHMAN.

Sworn and subscribed before me, this 23d day of August, A. D. 1878.

(Signed) CHAS. P. CLARKE, *U. S. Com'r.*

Adjourned to Tuesday, August 27th, 1878, at 11 o'clock a. m.

253 AUG. 27, 1878.

Present: The Commissioner and Thomas J. Clinger.

Examination of Thomas J. Clinger.

Interrogatory first. What is your name, age, occupation, and residence?

Answer. Thomas J. Clinger; am about thirty-six years of age, and am a telegraph operator; I reside at No. 2027 Woodstock St., Phila.

Interrogatory second. How far from Denver, Colorado, do you reside?

Ans. About two thousand miles.

Interrogatory third. Have you the possession of the bond set up in the bill and amended bill of complainant's, for thirty-four thousand dollars, to be discharged by the payment of seventeen thousand dollars, interest, &c., dated 22d August, 1870; if so, file the same with your deposition, and mark it so as [to] identify?

Answer. I have not possession of the bond; paper marked Exhibit A being handed me by the commissioner, I identify it as the bond and warrant of the Fairmount Gold and Silver Mining Com-

pany to Thomas Hare and Jonathan A. Pugh, and mark is
254 with my initials, T. J. C. I recognize it by my signature at
secretary of said company. The signature therein is in my handwriting, and was executed Aug. 22, 1870, the day it bears date.

Interrogatory fourth. If you have the mortgage executed by the Fairmount Gold and Silver Mining Company to Thomas Hare and Jonathan H. Pugh, trustees, dated 22d August, 1870, to secure the payment of said seventeen thousand dollar bond and interest, please file the same in your deposition and identify it by some mark?

Answer. I have not the mortgage, but it being shown me by the commissioner, I recognize it by my signature, and mark it with my initials, T. J. C., for identification, and ask it to be taken as a part of my deposition. I was secretary of the said company at the time this mortgage was executed, and it bears date Aug. 22, 1870, the day it was executed. This paper is marked Exhibit B by the commissioner.

Interrogatory fifth. Are or are not said bond and mortgage the same identical bond and mortgage set up and referred to in the original and amended bills of complainants in this suit?

Answer. They are the same.

Interrogatory sixth. State what ever you may know as to what
debts of said Fairmount Gold and Silver Mining Company
255 were secured, or intended to be secured, by the parties at the
time the bond and mortgage were executed? Please be explicit in giving the names of the creditors, and amount of the debts secured by the bond and mortgage, file a list of the claims showing names, dates, and amounts; mark it for identification as part of your deposition.

Answer. The debts amount to about $17,000.00. Exhibit C having been shown me by the commissioner, I identify and mark it with my initials, T. J. C. This is a correct list of the debts intended to be secured by the mortgage, and was copied from the books of the company. The names of the creditors appear therein.

Interrogatory seventh. If you give names, dates, and amounts in answer to the last question, then give your knowledge as to the correctness of the same, and tell how you know what said debts were embraced in, covered by, and intended to be, secured by the seventeen thousand dollar bond and mortgage?

Answer. I know them to be correct from the books of the company, as I was secretary of the board of directors at the time. They were intended to be secured by the bond and mortgage given by the officers of the company, and they had their authority from the
stockholders. Exhibit D being handed to me by the commis-
256 sioner, I identify and mark it with my initials, T. J. C. It
is a transcript from the minute book of the company. This exhibit shows that the bond and mortgage was created Aug. 22, 1870, and executed at that time to secure parties named in Exhibit C for moneys borrowed from them by the company.

Interogatory eighth. If any debts were secured by said bond and mortgage *created after* the date of said mortgage, name the parties, and give dates and amounts, and your means of knowing?

Answer. I have no personal knowledge of any debts being created that were intended to be secured by the bond and mortgage after the giving of said bond and mortgage.

Interrogatory ninth. In your answer to sixth interrogatory, do you or do you not mean to say that no other debts were secured by the bond and mortgage than those named by you in your answer to the sixth interrogatory?

Answer. I have no knowledge of any other debts that were to be secured by this bond and mortgage than those specified in Exhibit C..

Interrogatory tenth. State whatever you may know as to those debts created by the Fairmount Gold and Silver Mining Company *subsequent* to the date of the bond and mortgage aforesaid, being se-
cured, or intended to be secured, by the said bond and mort-
257 gage, and your means of knowing?

Answer. I know of no debts whatever that were created subsequent to the date of the bond and mortgage that were intended to be secured by it; I was secretary at the time said bond and mortgage was executed.

Interrogatory eleventh. If you have the possession of the notes executed by said Fairmount Gold and Silver Mining Company, which were delivered to the payees or creditors of said company, and which notes were covered and secured by the aforesaid bond and mortgage, you will please file them with your deposition, and give a list of them showing the names, dates, and amounts, so marked as to be identified as a part of your deposition?

Answer. I have not possession of the notes, but upon them being handed me by the commissioner, I recognize them by my signature as secretary of said company; a list of said notes marked Exhibit E, and which I mark with my initials, T. J. C., as being a correct list of the notes intended to be secured by the said bond and mortgage.

Interrogatory twelfth. If you know the amount of indebtedness of the company to one John W. Thackara, you will please state the amount, when and how created, and if any note or notes were executed and delivered to him, then give the dates and amounts of the
same, and explain the same fully; and if paid, how and when,
258 and by whom; have they sued upon; if so, when, where, and
by whom?

Answer. I have no personal knowledge of the subject-matter of this question.

Interrogatory thirteenth. State whatever you may know as to the indebtedness of said Fairmount Gold and Silver Mining Company to one Abram. C. Brown; when and how created; when and how paid; if paid, to whom Brown assigned said indebtedness; and if sued upon, by whom, when, and what court? Tell all you may know about the same, and how you know it.

Answer. I know the indebtedness of the company to Abram C. Brown. The commissioner now hands to me Exhibit H, which, upon examination, I find contains ten evidences of indebtedness, to five of which my personal knowledge extends. They are as follows: Note Aug. 15, 1868, for $250; note Aug. 5, 1868, for $333.33; note July 6, 1869, for $183.33; note Oct. 9, 1869, for $680; note M'ch 31, 1870, for $350.69. These notes were given to Abram C. Brown, by the company, for borrowed money, and were secured by the bond and mortgage. I identify this Exhibit H, with my initials, T. J. C. I have no personal knowledge that suit was brought upon them, or that they were ever paid. I have not been a director or officer of the company since February, 1871.

259 Interrogatory fourteenth. If you know of any indebtedness on the part of said company to J. P. Harker, then tell all about it, the amount thereof, when created, how created, how settled, by note or otherwise; if assigned by Harker, to whom; if suit was brought, by whom, and when; and explain the whole matter and your means of knowing?

Answer. I know of the indebtedness of the company to J. P. Harker, amounting to $20; it was created May 17, 1869, under the legislation of the company, as appears in Exhibit D, in my answer to the seventh interrogatory. This debt represents money borrowed from the said Harker by the company.

Interrogatory fifteenth. If you have any knowledge of any indebtedness of the said company to one Swain Thackara, then tell all you know about it, giving dates, amounts, how and when created; if transferred, to whom; if sued on, by whom, and when?

Answer. I know of the indebtedness of the company to Swain Thackara for $100, and a note was given by the company for it bearing date Apr. 12, 1869. The note was authorized by the board of directors; it is secured by the bond and mortgage. I have no personal knowledge that suit was brought upon said note.

Interrogatory sixteenth. If you have any knowledge as to whether any of the debts due from said company to John W. Thackara, Abram C. Brown, J. P. Harker, and Swain Thackara, above described and spoken of, were secured by said bond and mortgage, you will please describe fully and clearly which of 260 them, giving names, dates, and amounts *are thus secured*, and which were *not thus secured*, and your means of knowing.

Answer. I have a knowledge of the debts of the company which were secured by the bond and mortgage to the persons named in this interrogatory; those thus secured are contained in Exhibit "I," which I mark with my initials, T. J. C., for identification; my knowledge arises from the fact that I was at the time, to wit, Aug. 22, 1870, secretary of the board of directors of said company; I have no personal knowledge of the debts not secured by the bond and mortgage.

Interrogatory seventeenth. State whatever you may know as to the knowledge of said John W. Thackara, that the bond and mortgage aforesaid were executed, and for what purpose they were executed; what debts were or were not secured by them; and tell all you may know about it, and your means of knowing, as well as Thackara's means of knowing.

Answer. In the spring of 1871, when John W. Thackara returned from Colorado, he had frequent conversations with our former president, Charles H. Brown, (now deceased,) in my presence, in reference to the bond and mortgage, dated Aug. 22, 1870; he was informed that the purposes and object of said bond and mortgage were to secure parties who had already loaned the said 261 company money for its further development, and for which notes or bonds had already been issued; the bond and mortgage was given for the purpose of securing the parties who had already advanced the money, and who required other security than the notes already given; my means of knowing is that I am a stockholder, and was a director and secretary of the company at that time; Thackara's means of knowing were frequent conversations with the board of directors at their meetings, and while he was in Philadelphia he was acting in the capacity of general agent; he had access to the books of the company at all times.

Interrogatory eighteenth. State whatever you may know as to whether the indebtedness of said company to the sundry creditors named in the answer and list filed to the sixth interrogatory is *bona fide* or not, or due and owing by the company at the time of the commencement of this suit, and since.

Answer. I know that the indebtedness of the company to the sundry creditors named in my answer to the sixth interrogatory, as set forth in the list filed therein and marked Exhibit C, is *bona fide*, and was due and owing by the company at the commencement of this suit, and is still owing.

262 Interrogatory nineteen Will you please give a list of the debts due from said company for which this suit was brought, which are *bona fide*, due, owing, and unpaid, and secured by the mortgage aforesaid, and also your means of knowing?

Answer. I have not the list, but it being shown me by the commissioner, I find that he has marked it Exhibit "L," and I mark it with my initials, T. J. C., for identification; it is the same as Exhibit C, for which answer is made by me in my answer to the sixth interrogatory; these debts are secured by the mortgage and are due and owing, and the bond and mortgage was created for the purpose of securing them, and this was done by the authority of the stockholders, as appears in Exhibit D, in my answer to the seventh interrogatory.

Interrogatory twentieth. Were or were not any or all of the notes on said company, upon which John W. Thackara brought suit in Clear Creek county, Colorado, secured by said bond and mortgage; if so, state which were and which were not secured? Be explicit and give source of your knowledge.

Answer. I have no personal knowledge of the matter inquired of in this interrogatory.

Interrogatory twenty-first. At whose instance, or by whose order or request, was this suit brought?

263 Answer. I am informed by the trustees that this suit is brought on their own motion as bondholders, and at the request of other bondholders; I am not a bondholder.

Interrogatory twenty-second. State whatever you may know as to the indebtedness of said company to Thomas Hare and Jonathan H. Pugh, how created, when created; if settled, by note or otherwise; whether the same is now just, due, and unpaid in whole or in part; explain fully all you know about said indebtedness?

Answer. I know the indebtedness of the company to Thomas Hare and Jonathan H. Pugh, and the commissioner now hands me a paper which he has marked Exhibit O 1, which I mark with my initials, T. J. C., for identification, and which sets forth the indebtedness of the company to Thomas Hare, with dates and amounts; the commissioner now hands me a paper marked Exhibit O, and which I mark with my initials, T. J. C., for identification, which sets forth the indebtedness of the company to Jonathan H. Pugh, with dates and amounts; the indebtedness to the two parties by the company were settled by note, and are just, due, and owing.

Interrogatory twenty-third. Have Hare and Pugh, as trustees, or individually, brought any other suit, at law or in equity, in Colorado, or other place, on the indebtedness of the company secured by said bond and mortgage; if so, when and where?

Answer. I have no personal knowledge of the matter contained in this interrogatory.

264 Interrogatory twenty-fourth. What means of knowledge had John W. Thackara as to the execution of the bond and mortgage aforesaid, and the purpose and object of the same, his opportunities of knowing, his access to the books and proceedings of the company, its meetings, and what official capacity did he occupy to the company? Be explicit, and tell all about [it.]

Answer. I have fully answered this interrogatory in my answer to the seventeenth interrogatory. At that time he was general agent of the company, resident of Colorado, but had come to Philadelphia, and had frequent conversations with the directors at their meetings, and other places, concerning the purposes and objects of the creation of the bond and mortgage, and I have frequently seen him examine the books of the company.

Interrogatory twenty-fifth. If you know anything else material to the parties herein, touching this case, you will please state it, and give your means of information and knowledge?

Answer. I have no personal knowledge of the matter contained in this interrogatory.

Interrogatory twenty-sixth. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matter in question in this cause; if yea, set forth the same fully, and at large in your answer?

265 Answer. There is a debt, No. 95, to John R. Brownholtz, dated Dec. 2, 1870, for $66.66. This appears in Exhibit C, in my answer to the sixth interrogatory. This note was given by the company after the date of the creation of the bond and mortgage, and was for a loan for that amount previously made to the company by Brownholtz. This debt is secured by the bond and mortgage, the money having been loaned prior to the date of the mortgage. The commissioner now hands me Exhibit "Q," which I mark with my initials, "T. J. C.," for identification, and it is the agreement of trust between the Fairmount Gold and Silver Mining Company and Thomas Hare and Jonathan H. Pugh, as trustees.

Cross-interrogatories and answers thereto by the witness, THOMAS J. CLINGER, on the part of complainants:

Cross-interrogatory first. If, in answer to the fifth direct interrogatory, you say that the bond and mortgage testified to are the same mentioned in original and amended bills of complaint herein, state how you know they are the same, and how you know what bond and mortgage are described in said original and amended bills?

Ans. I know that they are the same as described in the original and amended bills, and my means of knowledge arises from the fact, that at the time of the creation of the bond and mortgage
266 I was a stockholder and director of the company, and know
that the bond and mortgage was created by the authority of the stockholders, at a meeting held for that purpose, on June 16th, 1868. My additional means of knowledge are, that I signed the bond and mortgage, in my official capacity as secretary of the company, on 22d day of August, 1870.

Cross-interrogatory second. If, in answer to the sixth direct ininterrogatory, you say you know what debts were secured by the Fairmount Gold and Silver Mining Company by the bond and mortgage, state explicitly by what each and every of such debts were, and give the date that each was contracted, the amount of the same; state what, if any, evidence of indebtedness such creditors had, and attach a copy of such instruments to your answer. Also state how you know such indebtedness, and each of them, were secured by such bond and mortgage, and if you were furnished, as trustee, at the time of the execution of such bond and mortgage, with a schedule or list of the indebtedness secured by such bond and mortgage; attach a copy thereto as an exhibit to your answer; and if in answer to the same interrogatory you attempt to state what indebtedness was *intended to* be secured by such bond and mortgage, state fully how you know and your means of information; state the same fully.

Answer. In my answer to sixth interrogatory I have iden-
267 tified Exhibit C, and that exhibit states fully all the debts
that were intended to be secured by the bond and mortgage
for borrowed money, the date that each debt was created by the company, and the amounts of the same appear upon this exhibit. My knowledge as to what indebtedness was secured by the bond and mortgage comes in this way: I was present at a meeting of the stockholders that authorized the creation of the bond and mortgage and which was for the purpose of securing the indebtedness of the company existing at the date of its execution, to wit, August 22, 1870, and I executed them as secretary of the company, and saw the president sign and execute them in my presence.

Cross-interrogatory third. If, in answer to the eighth direct interrogatory, you say that said bond and mortgage were made to secure debts thereafter to be created, state how you know the same and mention each and every of such debts and what action was taken by the Fairmount Gold and Silver Mining Company to indicate that such bond and mortgage were made to secure debts to be created thereafter.

Answer. The bond and mortgage was executed Aug. 22, 1870, and was intended to secure the debts of the company existing at that time for borrowed money, and I know of no debts created subsequent to its date that were intended to be secured by said bond and
mortgage.

268 Cross-interrogatory fourth. If in answer to direct interroga-
tories you give a list of all the indebtedness in full that such bond and mortgage were given to secure and say that such indebtedness was evidenced by notes or any written acknowledgement, state how many and which of said notes or evidences of indebtedness were paid in any manner by the Fairmount Gold and Silver Mining Company, or exchanged for the stock of said company, and also state why such notes or evidences of indebtedness are not cancelled and how they came again to be issued. Also state who now are or claim to be the owners of each and every of such notes or evidences of indebtedness, and how they came in the possession of such persons.

Ans. I have no personal knowledge of the notes or evidences of indebtedness having been paid or exchanged in any manner whatever.

Cross-interrogatory fifth. If you say that any of the indebtedness of The Fairmount Gold and Silver Mining Company was taken up and satisfied, either by exchange of the same for the stock of the company or in any other manner, give a full and complete bill of all the debts so paid, either by stock or in any other manner, and a full and complete list of each and every debt of the said company
not taken in and paid?

269 Ans. I have no personal knowledge of the matter inquired
of in this interrogatory.

(S'g'd) THOS. J. CLINGER.

Sworn and subscribed before me, this 3d day of September, A. D. 1878.

(S'g'd) CHAS. P. CLARKE,
U. S. Commissioner.

I, Charles P. Clarke, of the county of Philadelphia, and State of Pennsylvania, a commissioner duly appointed to take the depositions of the said Jonathan H. Pugh, Thomas Hare, Jacob S. Fish, Alfred Smith, Johh Russell, William N. Ashman, and T. J. Clinger, witnesses, whose names are subscribed to the foregoing depositions, do hereby certify that previous to the commencement of the examination of the said Jonathan H. Pugh, Thomas Hare, Jacob S. Fish, Alfred Smith, John Russell, William N. Ashman, and T. J. Clinger, as witnesses in the said suit between the said Thomas Hare and Jonathan H. Pugh, trustees, &c., complainants, *vs.* The Fairmount Gold and Silver Mining Company and G. B. Reed *et al.*, defendants, they were duly sworn by me, C. P. Clarke, to testify the truth in relation to the matter in controversy between the said parties, so far [as] they should be interrogated concerning 270 the same; that the said depositions were taken by C. P. Clarke, and reduced to writing by J. H. Wolfe and H. B. Yerger, at No. 501 Chestnut street, in the city of Philadelphia, county of Philadelphia, and State of Pennsylvania, on the 2d, 3d, 6th, 7th, 8th, 10th, 12th, 14th, 15th, 16th, 17th, 19th, 20th, 23d, and 27th days of August, and upon the 3d day of September, A. D. 1878, and that after said depositions were taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witnesses, and that thereupon the same were signed and sworn to by the said deponents, Jonathan H. Pugh, Thomas Hare, Jacob S. Fish, Alfred Smith, John Russell, William N. Ashman, and T. J. Clinger, before me, at the place and on the days and the year last aforesaid.

In witness whereof, I have hereunto set my hand and official seal, this third day of September, A. D. 1878.

[SEAL.] (S'g'd) CHAS. P. CLARKE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *sct.:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, do hereby certify that I am well acquainted with the handwriting of Charles P. 271 Clarke, Esq., whose name is subscribed to the annexed certificate, and that the signature to the same is in his proper handwriting; and I do further certify that he was, at the time of signing the same, and still is, a United States commissioner for the eastern district of Pennsylvania.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, at Philadelphia, this thirtieth day of September, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 103d.

[SEAL.]. (Signed) SAMUEL BELL,
Clerk Circuit Court U. S.

STATE OF PENNSYLVANIA, *County of Philadelphia:*

W. N. Ashman and Thomas J. Ashton, of the city and county of Philadelphia and State aforesaid, being duly sworn, make oath and say, that they know Charles H. Brown, whose name is signed as president of the Fairmount Gold and Silver Mining Company, and that they know T. J. Clinger, whose name is signed as secretary of said Mining Company, to the bond and warrant of attorneys hereto annexed, to have been president and secretary of the said 272 Mining Company at the time that they signed the said bond and warrant of attorney, and were present and saw them sign the said bond and the said warrant of attorney, on or about the day the same bears date.

(Signed) W. N. ASHMAN.
(Signed) THOMAS J. ASHTON.

Duly sworn.

STATE OF PENNSYLVANIA,
City and County of Philadelphia, } *ss:*

I, Samuel L. Taylor, a commissioner for the Territory of Colorado, here resident within and for the county aforesaid, do hereby certify that William N. Ashman and Thomas J. Ashton, who are personally known to me to be the same persons whose names are subscribed to the within affidavit as parties thereto, appeared before me this day, in person, and both being by me duly sworn, did make oath to the facts and circumstances in the said affidavit set forth, and signed the same in my presence.

Witness my hand and official seal as such commissioner, this ninth day of November, A. D. 1875.

[SEAL.] (S'g'd) SAMUEL L. TAYLOR,
Commissioner for Colorado.

273 *Bond and Warrant.*

Know all men by these presents, that the "Fairmount Gold and Silver Mining Company," a corporation created by the Legislature of Pennsylvania, (hereinafter called the obligors,) are held and firmly bound unto Thomas Hare and Jonathan H. Pugh, of the city of Philadelphia, (hereinafter called the obligees), in the sum of thirty-four thousand dollars, lawful money of the United States of America, to be paid to the said obligees, their certain attorneys, executors, administrators, or assigns, to which payment well and truly to be made the said corporation do bind and oblige themselves and their successors firmly by these presents. Sealed with their seal, dated the twenty-second day of August, in the year of our Lord one thousand eight hundred and seventy.

The condition of this obligation is such that if the above-bounden obligors, their successors, or any of them, shall and do well and truly pay, or cause to be paid, unto the above-named obligees, their certain attorney, executors, administrators, or assigns, the just sum of seventeen thousand dollars, lawful money aforesaid, at the expiration of one year from the date hereof, together with interest thereon at the rate of six per cent. per annum, payable half yearly, in gold, without any fraud or further delay; then the above
obligation to be void, or else to be and remain in full
274 force and virtue: Provided, however, and it is hereby
expressly agreed, that if at any time default shall be made in the payment of interest as aforesaid, for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid, shall at the option of the said obligees, their executors, administrators, or assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, may be enforced and recovered at once; anything herein contained to the contrary thereof, notwithstanding; and it is hereby declared and agreed that the said debt or principal sum of seventeen thousand dollars is the same which by an indenture of mortgage of even date herewith, made between the above-named obligors and obligees, to which adhesive stamp of the internal revenue of the United States, of the value or denomination of seventeen dollars, had been previously duly affixed, is secured upon a certain mill, mill site, steam engine and machinery in said mill, and all the appurtenances thereunto belonging, and the following real estate, mines, or lodes, to wit: Fifteen hundred feet on the Fairmount lode; fifteen hundred feet on the Good Enough lode; eight hundred feet on the Thackara lode; eight hundred feet on the Hanson lode; eight hundred feet on the General Moorhead lode, and eight hundred feet on the Robert Steel lode, together with all the real estate and appurtenances thereunto or in any wise appertaining or belonging, situate in, on, and adjacent to Hukill gulch,
Spanish Bar district, Clear Creek county, Colorady Terri-
275 tory.

[CORPORATION SEAL.] (S'g'd) CHAS. H. BROWN,
" *Pres't Fairmount Gold and Silver Mining Company.*
(S'g'd) T. J. CLINGER,
" *Sec'ty Fairmount Gold and Silver Mining Company.*

Signed and delivered in the presence of—
(S'g'd) W. N. ASHMAN.
(S'g'd) THOMAS J. ASHTON."

The word "corporation" above 9th line, "successors" above 14th line, and "in gold" above 19th line, being first interlined, and "heirs, executors, and administrators" on 9th and 14th lines, being first erased.

To C. Wakeley, Esq., attorney of the court of common pleas, at Georgetown, in the county of Clear Creek, in the State of —, Territory of Colorado, or to any other attorney of the said court, or of any other court there or elsewhere.

Whereas, the "Fairmount Gold and Silver Mining Company," in and by a certain obligation bearing even date herewith, do stand bound unto Thomas Hare and Jonathan H. Pugh, in the sum of thirty-four thousand dollars, lawful money of the United States of America, conditioned for the payment of the just sum of seventeen 276 thousand dollars, lawful money aforesaid, at the expiration of one year from the date thereof, together with interest thereon, at the rate of six per cent. per annum, payable half yearly in gold, it being the same debt or principal sum, which by an indenture of mortgage, also of even date herewith, made between the above-named obligors and obligees, to which adhesive stamps of the internal revenue of the United States of the value or denomination of seventeen dollars had been previously affixed, is secured upon a certain mill, mill site, steam engine, and machinery in said mill, and all the appurtenances thereunto belonging, and the following real estate, mines, or lodes, to wit, fifteen hundred feet on the Fairmount lode, fifteen hundred feet on the Good Enough lode, eight hundred feet on the Thackara lode, eight hundred feet on the Hanson lode, eight hundred feet on the General Moorhead lode, and eight hundred feet on the Robert Steel lode, together with all the real estate and appurtenances thereunto, or in anywise appertaining or belonging, situate in, on, and adjacent to Hukill Gulch, Spanish Bar district, Clear Creek county, Colorado Territory.

Provided, however, and it is thereby expressly agreed that if at any time default shall be made in the payment of interest as aforesaid for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said obligees, their executors, administrators, or assigns become due and payable immediately, and payment 277 of said principal debt, and all interest thereon, may be enforced and recovered at once, anything therein contained to the contrary thereof notwithstanding. These are to desire and authorize you, or any of you, to appear for the said "Fairmount Gold and Silver Mining Company," its successors, in the said court or elsewhere, in an action of debt, there or elsewhere brought, or to be brought, against the said "Fairmount Gold and Silver Mining Company," and their successors, at the suit of the said obligees, their executors, administrators, or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time there or elsewhere to be held, and confess judgment thereupon against the said "Fairmount Gold and Silver Mining Company," and their successors, for the sum of thirty-four thousand dollars, lawful money of the United States of America, debt, besides costs of suit, by *non sum informatus, nihil dicit*, or otherwise, as to you shall seem meet; and for your, or any of your so doing, this shall be your sufficient warrant; and the said "Fairmount Gold and Silver Mining Company" do hereby for themselves and their successors remise, release, and forever quit claim unto the said obligee, certain attorney, executors, administrators, and assigns, all, and all manner of error or errors, misprisions, misentries, defects, and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise, touching or concerning the same.

278 In witness whereof, the said "Fairmount Gold and Silver Mining Company," by ther proper officers, have set their seal, this 22d day of August, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] (S'g'd) CHAS. H. BROWN,
President "Fairmount Gold and Silver Mining Company."
(S'g'd) T. J. CLINGER,
Secretary "Fairmount Gold and Silver Mining Company."

Sealed and delivered in the presence of—
(S'g'd) W. N. ASHMAN.
(S'g'd) THOMAS J. ASHTON.

The words "in gold" above 13th line, "Fairmount Gold and Silver Mining Co. and their successors" above 35th, 37th, 39th, and 40th lines, 43d and 44th lines, and "the said Fairmount Gold and Silver Mining Co. by their proper officers" above 49th lines, being first interlined, and "heirs, ex'rs, and adm'rs" on 35th, 37th, 39th, and 44th lines being first erased.

Endorsed: August 22d, 1870. Bond and warrant. "The Fairmount Gold and Silver Mining Company" to Thomas Hare and Jonathan H. Pugh. For $34,000.00. Ex. "A," C. P. C.," U. S. Com'r. S'g'd T. H. J. S. F. W. N. A. T. J. C. J. H. P.

[$17 int. rev. stamps cancelled.]

279 This indenture, made the twenty-second day of August, in the year of our Lord one thousand eight hundred and seventy (1870), between "The Fairmount Gold and Silver Mining Company," a corporation created by the Legislature of Pennsylvania, of the first part, and Thomas Hare and Jonathan H. Pugh, of the city of Philadelphia.

Whereas the said "Fairmount Gold and Silver Mining Company" in and by their certain obligation, or writing obligatory, under their corporate hand and seal, duly executed, bearing even date herewith, stand bound unto the said Thomas Hare and Jonathan H. Pugh in the sum of thirty-four thousand dollars, lawful money of the United States of America, conditioned for the payment of the just sum of seventeen thousand dollars, lawful money aforesaid, at the expiration of one year from the date thereof, together with interest thereon at the rate of six per cent. per annum, payable half yearly in gold without any fraud or further delay.

Provided, however, and it is thereby expressly agreed, that if at any time default shall be made in the payment of the interest as aforesaid for the space of thirty days after any payment thereof shall fall due, then, and in such case, the whole principal debt aforesaid shall, at the option of the said Thomas Hare and Jonathan H. Pugh, their executors, administrators, or assigns, become due and payable immediately; and payment of said principal, and all interest thereon, may be enforced and recovered at once, anything therein
280 contained to the contrary thereof notwithstanding, as in and by the said recited obligation and the condition thereof, relation being thereunto had, may more fully and at large appear.

Now this indenture witnesseth, that the said "Fairmount Gold and Silver Mining Company," as well for and in consideration of the aforesaid debt or principal sum of seventeen thousand dollars, and for the better securing the payment of the same with interest as aforesaid, unto the said Thomas Hare and Jonathan H. Pugh, their executors, administrators and assigns, in discharge of the said recited obligation as for and in consideration of the further sum of one dollar unto them in hand well and truly paid by the said Thomas Hare and Johnathan H. Pugh, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, and confirm unto the said Thomas Hare and Jonathan H. Pugh, their heirs and assigns, all that certain mill, mill site, steam engine and machinery in said mill, and all the appurtenances thereunto belonging, and the following real estate, mines, or lodes, to wit: Fifteen hundred feet on the Fairmount lode, fifteen hundred feet on the Goodenough lode, eight hundred feet on the Thackara lode,
281 eight hundred feet on the Hanson lode, eight hundred feet on the General Moorhead lode, and eight hundred feet on the Robert Steel lode, together with all the real estate and appurtenances thereunto, or in anywise appertaining or belonging, situate in, on, or adjacent to, Hukill Gulch, Spanish Bar District, Clear Creek county, Colorado Territory.

Together with all and singular the buildings, ways, waters, watercourses, rights, liberties, privileges, improvements, hereditaments, and appurtenances, whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof.

To have and to hold the said mill, mill sites, lodes, and mines, machinery, hereditaments, and premises hereby granted, or mentioned, and intended so to be, with the appurtenances, unto the said Thomas Hare and Jonathan H. Pugh, their heirs and assigns, to and for the only proper use and behoof of the said Thomas Hare and Jonathan H. Pugh, their heirs and assigns forever.

Provided always, nevertheless, that if the said "Fairmount Gold and Silver Mining Company, their successors, or assigns, do and shall well and truly pay, or cause to be paid, unto the said Thomas Hare and Jonathan H. Pugh, their executors, administrators or assigns, the aforesaid debt, or principal sum of seventeen thousand dollars, on the day and time hereinbefore mentioned, and 282 appointed for payment of the same, together with interest as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything, for or in respect of any taxes, charges, ar assessments whatsoever, that then, and from thenceforth, as well this present indenture and the estate hereby granted, as the said recited obligation shall cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

And provided also, that it shall and may be lawful for the said Thomas Hare and Jonathan H. Pugh, their executors, administrators, or assigns, when, and as soon as the principal debt or sum hereby secured shall become due and payable as aforesaid, or in case default shall be made for the space of thirty days, in the payment of interest on the said principal sum, after any payment thereof shall fall due as aforesaid, to sue out forthwith a writ or writs of *scire facias* upon this indenture of mortgage, and to proceed thereon to judgment and execution for the recovery of the said principal debt, and all interest due thereon, without further stay, any law, usage, or custom to the contrary notwithstanding.

In witness whereof, the said parties, to these presents, have hereunto interchangeably set their hands and seals.

Dated the day and year first above written.

[CORPORATION SEAL.] (S'g'd) CHAS. H. BROWN,
President of "Fairmount Gold and Silver Mining Company."
(S'g'd) T. J. CLINGER,
Secretary of "Fairmount Gold and Silver Mining Company."

283 Sealed and delivered in the presence of us—
(S'g'd) W. M. ASHMAN.
(S'g'd) THOMAS J. ASHTON.

The said indenture having first had affixed thereto revenue stamp of the United States of the denomination or value of seventeen dollars, and the words "heirs, executors, administrators" on the 12th line of this page being first erased, and the words "in gold" being first interlined between the 14th and 15th lines of first page.

STATE OF PENNSYLVANIA, }
City and County of Philadelphia, } *ss:*

On the twenty-fifth day of August, anno Domino 1870, before me, a commissioner of deeds for the Territory of Colorado, personally appeared the above-named Charles H. Brown and T. J. Clinger, president and secretary of the said corporation, and in due form of law acknowledged the above *indenture of mortgage* to be the act and deed of the said corporation, and desired the same might be recorded as such.

The said Charles H. Brown, being duly sworn, deposes and says
that he was personally present at the executon of the above-
284 written indenture and saw the common seal of the said corpora-
tion duly affixed thereto; and that the seal so affixed thereto is
the common and corporate seal of the said "Fairmount Gold and
Silver Mining Company," and that the above-written indenture was
duly sealed and delivered by and as and for the act and deed of
the said corporation for the uses and purposes therein mentioned;
and that the name of this deponent subscribed to the above inden-
ture as president of said corporation, is of this deponent's own proper
handwriting.

Witness my hand and seal, the day and year aforesaid, the above-written indenture being duly acknowledged and the above affidavit duly sworn to and subscribed before me, the words "in gold" being first interlined between the 14th and 15th lines of first page, and "heirs, executors, administrators," first erased on 12th line of this page, and "of the said corporation" interlined between the 3d and 4th lines of this acknowledgment.

[SEAL.] (S'g'd) SAMUEL L. TAYLOR,
Commissioner for Colorado.

285 Endorsed: Mortgage. The Fairmount Gold and Silver Mining Company to Thomas Hare and Jonathan H. Pugh. Territory of Colorado, Clear Creek County, *ss:* I hereby certify that the within instrument was filed in this office for record, August 30th, 1870, at 9 o'clock p. m., and recorded, Book Number 11, pages 17, 18, 19, and 20, of Mortgages. S'g'd, Wm. Spruance, recorder. S'g'd, J. H. P. Ex. B., C. P. C., U. S. Com'r. T. H. J. S. F. W. N. A. T. J. C. Fees, $3.50.

List of Debts Intended to be Secured by the Mortgage, Showing Names, Dates, and Amounts.

To Matthew Walker	Aug. 5th, 1868	$50 00
Jacob S. Fish	Aug. 5th, 1868	100 00
Thomas Hare	Aug. 5th, 1868	220 00
William Williams	Aug. 5th, 1868	20 00
Horatio Roop	Aug. 5th, 1868	80 00
Jonathan H. Pugh	Aug. 5th, 1868	50 00
Gustavus Geissert	Aug. 5th, 1868	100 00
Peter Miller	Aug. 6th, 1868	200 00
J. Thornton Weaver	Aug. 7th, 1868	20 00
John Bateman	Aug. 11th, 1868	25 00
Ambrose H. Prichett	Jan. 18th, 1869	70 00
George Myers	Jan. 29th, 1869	10 00
Meyers Homiller	Feb. 3d, 1869	10 00
John R. Brownholz	Feb. 22d, 1869	50 00
Peter Miller	Feb. 22d, 1869	100 00

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To Thomas F. Scattergood	Feb. 23d, 1869	$15 00
Edward S. McGlue	Feb. 24th, 1869	20 00
Christian Van Gunden	Feb. 27th, 1869	10 00
R. C. Shelmerdine, M. D.	Feb. 27th, 1869	50 00
William B. Moylan	Feb. 27th, 1869	20 00
Geo. M. Highley	Feb. 27th, 1869	20 00
Wm. H. Shelmerdine	Mch. 2d, 1869	100 00
Thomas Hare	Aug. 5th, 1868	333 34
Jacob S. Fish	Aug. 5th, 1868	333 33
William H. Shelmerdine	Mch. 26th, 1869	250 00
Jonathan H. Pugh	Mch. 26th, 1869	250 00
Thomas Hare	Mch. 29th, 1869	250 00
Peter Miller	Mch. 29th, 1869	50 00
J. L. Sleeper & Son	Apr. 3d, 1869	15 00
Aaron S. Dunlery	Apr. 12th, 1869	15 00
Ezra Willits	Apr. 17th, 1869	100 00
Matthew Walker	May 31st, 1869	50 00
Samuel B. Ely	June 18th, 1869	80 00
John B. Ely	June 18th, 1869	70 00
Jonathan H. Pugh	July 9th, 1869	333 33
Thomas Hare	July 9th, 1869	666 67
Mary Ann Vinal	July 15th, 1869	100 00
Matthew Walker	July 24th, 1869	133 33
Israel L. Fish	Aug. 28th, 1869	15 00
Peter Miller	Aug. 30th, 1869	200 00
John R. Brownholz	Sept. 9th, 1869	30 00
Jonathan H. Pugh	Sept. 20th, 1869	133 33
Thomas Hare	Sept. 28th, 1699	333 33

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Thomas Hare	Oct. 19th, 1869	66 67
Jonathan H. Pugh	Oct. 19th, 1869	66 67
Wm. H. Shelmerdine	Oct. 19th, 1869	10 00
Thomas Hare	Nov. 16th, 1869	1,333 34
Jonathan H. Pugh	Feb. 4th, 1870	133 33
Thomas Hare	Feb. 4th, 1870	266 67
Thomas Hare	Feb. 24th, 1870	368 00
Jacob S. Fish	Feb. 24th, 1870	368 40
John R. Brownholz	Mch. 8th, 1870	66 67
David T. Clinger	Mch. 8th, 1870	66 67
Peter Miller	Mch. 8th, 1870	450 00
Thomas Hare	Mch. 9th, 1870	266 67
Jonathan H. Pugh	Mch. 11th, 1870	33 33
Scattergood & Dunlery	Mch. 12th, 1870	66 67
Robert C. Williams	Mch. 15th, 1870	133 33
Chas. N. Williams	Mch. 15th, 1870	66 67
Wm. H. Shelmerdine	May 4th, 1870	1,333 34

To Jabez Lewis	May 20th, 1870	$266 66
James Durnell	May 21st, 1870	80 00
George C. Hoeflich	May 21st, 1870	10 00
Ezra Pratt	May 21st, 1870	100 00
Horatio Roop	May 21st, 1870	66 67
Matthew Walker	May 23d, 1870	25 00
John Bateman	May 24th, 1870	66 67
Ezra Willetts	May 24th, 1870	25 00
R. C. Shelmerdine	June 21st, 1870	66 67
John R. Brownholz	Dec. 2d, 1870	66 66
Samuel Nelson	Aug. 5th, 1868	150 00

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Samuel Nelson	May 19th, 1870	25 00
Wm. B. Wharton	Aug. 13th, 1868	100 00
Thomas Nelson	Mch. 26th, 1869	100 00
Samuel Bowers	Aug. 20th, 1868	10 00
A. C. Brown	Aug. 5th, 1868	250 00
A. C. Brown	Mch. 2d, 1869	333 33
A. C. Brown	July 6th, 1869	183 33
A. C. Brown	Oct. 9th, 1869	680 00
A. C. Brown	Mch. 31st, 1870	350 69
Swain Thackara	Apl. 12th, 1869	100 00
John P. Harker	May 17th, 1869	20 00
Matthew Walker	May 19th, 1870	50 00
Jacob S. Fish	May 19th, 1870	452 50
Thomas S. Hare	May 19th, 1870	555 00
Jonathan H. Pugh	May 19th, 1870	540 00
Peter Miller	May 19th, 1870	355 00
John R. Brownholz	May 19th, 1870	66 66
R. C. Shelmerdine	May 19th, 1870	25 00
Wm. H. Shelmerdine	May 19th, 1870	570 12
Ezra Willetts	May 19th, 1870	30 00
R. F. Shannon	May 19th, 1870	50 00
W. Irving Vinal	May 19th, 1870	75 00
Samuel Arbuckle	Aug. 5th, 1868	50 00
George Meyers	Mch. 12th, 1870	15 00
		$2,784 28

Endorsed : J. H. P. Ex. " C," C. P. C., U. S. Com'r. S'g'd T. H. J. R. A. S. J. S. Fish. T. J. C.

289 *Extracts.*

Extract from minutes of stockholders' meeting, held Philadelphia, June 16th, 1868.

"After considerable discussion on the best means of raising funds for the completion of our works in Colorado," it was moved and carried that the directors be empowered to raise money for the completion of our works in Colorado, by bond and mortgage, as they may deem best."

Extracts from minutes of board of directors, special meeting, held July 27th, 1868.

"On motion, resolved, That Wm. H. Shelmerdine and Charles H. Brown be appointed a committee to prepare form of bond and report.

"On motion of Jacob S. Fish the form of bond was read and adopted."

Extracts from minutes of the regular meeting of the board of directors, held February 15th, 1870.

"On motion of J. H. Pugh the officials of the company were authorized to issue an additional $5,000 in bonds of the company at the usual discount of 25 per cent. on the dollar." "It was resolved, on motion of J. H. Pugh to call a meeting of the bondholders and directors together to consider the propriety of raising more funds to further the interests of the company to meet at the call of the president." "Meeting adjourned to meet March 1, 1870."

290 Adjourned meeting of the board of directors and bondholders, held March 1, 1870.

"On motion of Swain Thackara, the board of directors were authorized to have a bond and mortgage drawn in favor of the bondholders, using their best judgments in the matter to the interests of said bondholders."

Extracts from a stated meeting of the board of directors, held July 19th, 1870.

"On motion of J. H. Pugh, a committee of two be appointed to prepare and submit a plan by which the bondholders be made secure for money loaned at different times, and take such legal advice as they think necessary, and report the same at the next meeting of the board, which was agreed to.

"President appointed J. H. Pugh and Wm. H. Shelmardine.

"On motion, the president was included on the committee."

Extracts from minutes of adjourned regular meeting of the board of directors, held July 22d, 1870.

"The president read the preamble and regulations of the committee appointed at the last regular meeting held on the 19th inst., at 1141 Poplar St., which was adopted unanimously, and the committee continued—

"Whereas, at a meeting of the stockholders of The Fairmount Gold and Silver Mining Company, held at Mechanics' Hall, No. 1105 Coates St., on June 16th, 1868, it was 'resolved that 291 the board of directors be authorized to borrow money for the further improvement and development of our property in Colorado Territory by giving bond and mortgage as security for the same as they deem best; and whereas a number of the stockholders have been furnishing funds from time to time, taking therefor the company's notes, and a number of those notes being due and unpaid, and demand being made for the payment of the same, or better security given therefor, resolved, that the proper officers of the company be authorized and instructed to execute a proper bond and mortgage, or bonds and mortgages sufficient to cover said demand, and affix the corporate seal and proper signatures to the same."

Extracts from the minutes of adjourned meeting of the board of directors, held Aug. 19th, 1870.

"On motion of J. H. Pugh, the board proceeded into an election for two (2) persons to act as 'trustees' in a certain 'bond and mortgage and declaration of trust,' to be executed in favor of persons now holding certificates of indebtedness.

"Thomas Hare and Jonathan H. Pugh were unanimously elected trustees."

Extracts of minutes of special meeting of the board of directors, held Philad'a Aug. 24th, 1870.

292 "Committee to prepare bond and mortgage made a verbal report; bond and mortgage having been prepared, were submitted and approved and ordered to be properly executed and delivered."

Endorsed: J. H. P. Ex. "D," C. P. C., U. S. Com'r. S'g'd T. H. J. R. A. S. J. S. F. T. J. C.

[Five-cent internal revenue stamp.]

PHILADELPHIA, *June 21st*, 1870.

No. 87. [Interest to be paid from May 13th, '70.]

One year after date, or sooner, at the option of the directors, The Fairmount Gold and Silver Mining Company promise to pay to the order of R. C. Shelmerdine, M. D., sixty-six, 66 $\frac{67}{100}$, dollars, in lawful money of the United States, with six per cent. interest, payable in gold upon the redemption of this bond.

[SEAL.] (S'g'd) CHAS. H. BROWN, *President.*
(S'g'd) ABRAM C. BROWN, *Treasurer.*

Countersigned by the secretary:
(S'g'd) T. J. CLINGER, *Secretary.*

Endorsed: S'g'd, Robt. C. Shelmerdine. S'g'd, J. R. J. H. P. T. H. T. J. C.

293 Here follows certain paper writings, not herein set forth, as per list below.

294 *List of Notes covered and secured by the Bond and Mortgage, showing Names, Dates, and Amounts.*

No. 3.	Matthew Walker	Aug. 5th, 1868	$50 00
4.	Jacob S. Fish	Aug. 5th, 1868	100 00
5.	Samuel Nelson	Aug. 5th, 1868	150 00
6.	Thomas Hare	Aug. 5th, 1868	220 10
8.	William Williams	Aug. 5th, 1868	20 00
9.	Horatio Roop	Aug. 5th, 1868	80 00
10.	Jonathan H. Pugh	Aug. 5th, 1868	50 00
11.	Gustavus Geissert	Aug. 5th, 1868	100 00
12.	Peter Miller	Aug. 6th, 1868	200 00
14.	J. Thornton Weaver	Aug. 7th, 1868	20 00
15.	John Bateman	Aug. 11th, 1868	25 00
18.	Ambrose H. Pritchett	Jan. 18th, 1869	70 00
19.	George Myers	Jan. 29th, 1869	10 00
21.	Myers Homiller	Feb. 3d, 1869	10 00
22.	John R. Brownholz	Feb. 22d, 1869	50 00
23.	Peter Miller	Feb. 22d, 1869	100 00
24.	Thomas F. Scattergood	Feb. 23d, 1869	15 00
25.	Edward S. McGlue	Feb. 24th, 1869	20 00
26.	Christian Van Gunden	Feb. 27th, 1869	10 00
27.	R. C. Shelmerdine, M. D.	Feb. 27th, 1869	50 00
28.	Wm. B. Moylan	Feb. 27th, 1869	20 00
29.	George M. Highley	Feb. 27th, 1869	20 00
30.	Wm. H. Shelmerdine	March 2d, 1869	100 00
31.	Thomas Hare	Aug. 5th, 1868	333 34
33.	Jacob S. Fish	Aug. 5th, 1868	333 33

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35.	Wm. H. Shelmerdine	March 26th, 1869	250 00
36.	Jonathan H. Pugh	March 26th, 1869	250 00
37.	Thomas Hare	March 29th, 1869	250 00
38.	Peter Miller	March 29th, 1869	50 00
39.	J. L. Sleeper & Son	April 3d, 1869	15 00
40.	Aaron S. Dunlery	April 12th, 1869	15 00
42.	Ezra Willits	April 17th, 1869	100 00
45.	Matthew Walker	May 31st, 1869	50 00
46.	Sam'l B. Ely	June 18th, 1869	80 00
47.	John B. Ely	June 18th, 1869	70 00
49.	Jonathan H. Pugh	July 9th, 1869	333 33
50.	Thomas Hare	July 9th, 1869	666 67
51.	Mary Ann Vinal	July 15th, 1869	100 00
52.	Matthew Walker	July 24th, 1869	133 33
53.	Israel L. Fish	Aug. 28th, 1869	15 00
54.	Peter Miller	Aug. 30th, 1869	200 00
55.	John R. Brownholz	Sept. 9th, 1869	30 00
56.	Jonathan H. Pugh	Sept. 20th, 1869	133 33
57.	Thomas Hare	Sept. 20th, 1869	333 33

No. 59.	Thomas Hare	Oct.	19th, 1869	$66 67
60.	Jonathan H. Pugh	Oct.	19th, 1869	66 67
61.	Wm. H. Shelmerdine	Oct.	19th, 1869	10 00
62.	Thomas Hare	Nov.	16th, 1869	1,333 34
63.	Jonathan H. Pugh	Feb'y	4th, 1870	133 33
64.	Thomas Hare	Feb'y	4th, 1870	266 67
65.	Thomas Hare	Feb'y	24th, 1870	368 00
66.	Jacob S. Fish	Feb'y	24th, 1870	368 40
67.	John R. Brownholz	March	8th, 1870	66 67

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69.	Peter Miller	March	8th, 1870	450 00
69½.	David T. Clinger	March	8th, 1870	66 67
70.	Thomas Hare	March	9th, 1870	266 67
71.	Jonathan H. Pugh	March	11th, 1870	333 33
72.	Scattergood & Dunlery	March	12th, 1870	66 67
74.	Robert C. Williams	March	15th, 1870	133 33
75.	Chas W. Williams	March	15th, 1870	66 67
77.	Wm. H. Shelmerdine	May	4th, 1870	1,333 34
78.	Samuel Nelson	May	19th, 1868	25 00
79.	Jabez Lewis	May	20th, 1870	266 66
80.	James Durnell	May	21st, 1870	80 00
81.	George C. Hoeflich	May	21st, 1870	10 00
82.	Ezra Pratt	May	21st, 1870	100 00
83.	Horatio Roop	May	21st, 1870	66 67
84.	Matthew Walker	May	23d, 1870	25 00
85.	John Bateman	May	24th, 1870	66 67
86.	Ezra Willetts	May	24th, 1870	25 00
87.	R. C. Sheldmerine	June	21st, 1870	66 67
	John R. Brownhotz	Dec.	2d, 1870	66 66
				$9,426 52

Endorsed: Ex. "E," C. P. C., U. S. Com'r. Sgd. T. H. J. R. A. S. J. S. F. T. J. C. J. H. P.

297 *List of Indebtedness of the Company to J. W. Thackara.*

John W. Thackara,	Dec. 31st, 1871	$10,000 00
"	April 17th, 1872	1,789 50
"	" 30th, 1872	30 00
"	" 30th, 1872	20 00
		$2,839 50

Endorsed: Sgd. J. H. P. Ex. "F," C. P. C., U. S. Com'r. T. H. J. R. A. S. J. S. F.

Extracts.

Extracts from minutes of the board of directors' meeting of the Fairmount Gold and Silver Mining Company, held Philadelphia Aug. 7, 1867. President, Rev. W. C. Robinson; secretary, John P. Harker.

"The president, being a committee appointed to make a contract with Swain Thackara as general agent of the company, reported the same in writing, stipulating that upon his arrival in Colorado his salary should commence at $5,000 per annum, but he should
298 only draw for his subsistence at the rate of $100.00 per month
until the profits of the company shall guarantee the payment of the above sum of $5,000.

"On motion, $10,000.00 was agreed upon as the amount of the bond to be given by the said Swain Thackara; after which the report was accepted, and John P. Harker added to the committee.

"On motion, Swain Thackara was elected unanimously, general agent of the company, to proceed to Colorado Territory, according to the agreement this day made."

Extracts from the minutes of the board of directors' special meeting of the Fairmount Gold and Silver Mining Company, held Philadelphia, February 24th, 1869. President, Capt. Nelson; secretary, T. J. Clinger.

"On motion, the committee on the general agents read the report, which was accepted, and the committee discharged."

"On motion, J. W. Thackara was instructed to insure our mill and machinery for ten thousand ($10,000.00) dollars, soon as convenient, on his arrival in Colorado.

"Resolved, that we accept the resignation of Swain Thackara, and appoint John W. Thackara agant, under the same terms and agreements as his predecessor; so ordered.

299 "Swayne handing over to John all books, papers, &c., pertaining to the office."

"It was moved and seconded that an order be drawn on the treasurer in favor of J. W. Thackara, agent, for $513.30; so ordered."

Extracts from minutes of adjourned meeting, held Philadelphia, July 13th, 1869. C. H. Brown, president; sec'y, T. J. Clinger.

"Agents report read and accepted."

Extract from minutes of the stated meeting of the board of directors of the Fairmount Gold and Silver mining Company, held Philadelphia, April 17th, 1872. John Russell, president; Wm. H. Shelmerdine, secretary.

"The report of the committee to effect a settlement with John W. Thackara, general agent was read and accepted, and ordered to be spread upon the minutes; agreed to, to wit:

PHILA., *April* 17, 1872.

To the president and board of directors of the Fairmount Gold and Silver Mining Co.

GENTLEMEN: Your committee, appointed to effect a settlement with John W. Thackara, general agent of the company, have
300 the honor to submit the following report:

Upon examination, we find Mr. John W. Thackara was appointed general agent, under resolution adopted Feb. 24th, 1869, and arrived in Colorado, March 10th, 1869, terms and conditions to be the same as in contract between his predecessor, Mr. Swain Thackara, and the company, as found on the minutes of meeting of Aug. 7, 1867, page 54.

Your committee find that the total amount of salary due John W. Thackara, as general agent when the company arrives at a paying point, from date of appointment and arrival in Colorado, viz:

March 10, 1869, up to April 17th, 1872	$11,789 50
Less amount of certificate issued to John W. Thackara Dec. 31, 1871	10,000 00
Amount of certificate to be issued	$1,789 50

Total amount of salary due Mr. John W. Thackara, general agent, for the same period of time, to be paid $100 cash per month	$3,722 98
Less amount paid him up to date	2,300 00
Amount of cash due him	$1,422 98

(Signed) ALFRED SMITH,
J. H. PUGH,
JNO. RUSSELL,
Committee.

"On motion, it was resolved that a certificate of indebted-
301 ness for the sum of $1,789.50 be issued to John W. Thackara,
general agent, as final settlement of his salary account."

"The resignation of John W. Thackara, general agent, to take effect April 17th, 1872, was read and accepted."

Extract from minutes of a special meeting of the board of directors of the Fairmount Gold and Silver Mining Company, held Philadelphia, May 9th, 1871. C. H. Brown, president. T. J. Clinger, secretary.

"On motion, the officers were authorized to sell (1,000) one thousand addition shares of the capital stock of the Fairmount Gold and Silver Mining Company, being a part of the stock authorized by the stockholders at their last meeting, held May 3d, 1871."

Extract from minutes of a stated meeting of the board of directors of the Fairmount Gold and Silver Mining Company, held Philadelphia, December 19, 1871.

"Resolved that the company, from its profits, pay the sum of five thousand dollars upon the (1,000) one thousand shares of stock issued according to resolution passed by the board May 9, 1871, and further, pay all the outstanding certificates of indebtedness before any other profits shall be applied by the company, and
302 that certificate of indebtedness be issued to the persons taking
said one thousand shares, upon full payment thereof, to the amount of 50 per centum. Adopted."

Endorsed: S'g'd J. H. P. Ex. "G," C. P. C., U. S. Com'r. T. H. J. R. A. S. J. S. F.

List of Indebtedness of the Company to Abram C. Brown.

Abram C. Brown	Aug. 5th, 1868	$250 00
" " "	March 2d, 1869	333 33
" " "	July 6th, 1869	183 33
" " "	Oct. 9th, 1869	680 00
" " "	March 31st, 1870	350 69
" " "	April 30th, 1872	60 00
" " "	May 24th, 1872	25 00
" " "	July 2d, 1872	190 00
" " "	Aug. 15th, 1872	500 00
" " "	Aug. 28th, 1872	250 00
		$2,822 35

Endorsed: S'g'd J. H. P. Ex. "H," C. P. C., U. S. Com'r. T. H. J. R. A. S. J. S. F. T. J. C.

303 *List of Debts secured by Bond and Mortgage in the Suit of John W. Thackara* vs. *The Fairmount Gold and Silver Mining Company.*

A. C. Brown	Aug. 5th, 1868	$250 00
" "	March 2d, 1869	333 33
" "	July 6th, 1869	183 33
" "	Oct. 9th, 1869	680 00
" "	March 31st, 1870	350 69
Swain Thackara	April 12th, 1869	100 00
John P. Harker	May 17th, 1869	20 00
		$1,917 35

Endorsed: S'g'd J. H. P. Ex. "J," C. P. C., U. S. Com'r. T. H. J. R. A. S. J. S. F. T. J. C.

List of Debts not secured by the Bond and Mortgage in the Suit of John W. Thackara vs. *The Fairmount Gold and Silver Mining Company.*

John W. Thackara	Dec.	13th, 1871	$10,000 00
“ “ “	April	17th, 1872	1,789 50
“ “ “	April	3d, 1872	30 00
“ “ “	April	3d, 1872	20 00
A. C. Brown	April	30th, 1872	60 00
“ “	May	24th, 1872	25 00
“ “	July	2d, 1872	190 00
“ “	Aug.	15th, 1872	500 00
“ “	Aug.	28th, 1872	250 00

304 Endorsed: S’g’d J. H. P. Ex. “K,” C. P. C., U. S. Com’r. T. H., J. R., A. S., J. S. F.

A List of Debts Intended to be Secured by the Mortgage, showing Names, Dates, and Amounts.

Matthew Walker	Aug.	5th, 1868	$50 00
Jacob S. Fish	Aug.	5th, 1868	100 00
Thomas Hare	Aug.	5th, 1868	220 00
William Williams	Aug.	5th, 1868	20 00
Horatio Roop	Aug.	5th, 1868	80 00
Jonathan H. Pugh	Aug	5th, 1868	50 00
Gustavus Geissert	Aug.	5th, 1868	100 00
Peter Miller	Aug.	6th, 1868	200 00
J. Thornton Weaver	Aug.	7th, 1868	20 00
John Bateman	Aug.	11th, 1868	25 00
Ambrose H. Prichett	Jan.	18th, 1869	70 00
George Myers	Jan.	24th, 1869	10 00
Myers Homiller	Feb.	3d, 1869	10 00
John R. Brownholz	Feb.	22d, 1869	50 00
Peter Miller	Feb.	22d, 1869	100 00
Thomas F. Scattergood	Feb.	23d, 1869	15 00
Edward S. McGlue	Feb.	24th, 1869	20 00
Christian Van Gunden	Feb.	27th, 1869	10 00
R. C. Shelmerdine, M. D.	Feb.	27th, 1869	50 00

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William B. Moylan	Feb.	27th, 1869	20 00
Geo. M. Highley	Feb.	27th, 1869	20 00
Wm. H. Shelmerdine	March	2d, 1869	100 00
Thomas Hare	Aug.	5th, 1868	333 34
Jacob S. Fish	Aug.	5th, 1868	333 33
Wm. H. Shelmerdine	March	26th, 1868	250 00
Jonathan H. Pugh	March	26th, 1868	250 00
Thomas Hare	March	29th, 1869	250 00
Peter Miller	March	29th, 1869	50 00
J. L. Sleeper & Son	April	3d, 1869	15 00

Aaron S. Dunlery	April	12th,	1869	$15 00
Ezra Willits	April	17th,	1869	100 00
Matthew Walker	May	31st,	1869	50 00
Samuel B. Ely	June	18th,	1869	80 00
John B. Ely	June	18th,	1869	70 00
Jonathan H. Pugh	July	9th,	1869	333 33
Thomas Hare	July	9th,	1869	666 67
Mary Ann Vinal	July	15th,	1869	100 00
Matthew Walker	July	24th,	1869	133 33
Israel L. Fish	Aug.	28th,	1869	15 00
Peter Miller	Aug.	30th,	1869	200 00
John R. Brownholz	Sept.	9th,	1869	30 00
Jonathan H. Pugh	Sept.	20th,	1869	133 33
Thomas Hare	Sept.	28th,	1869	333 33
Thomas Hare	Oct.	19th,	1869	66 67
Jonathan H. Pugh	Oct.	19th,	1869	66 67
Wm. H. Shelmerdine	Oct.	19th,	1869	10 00
Thomas Hare	Nov.	16th,	1869	1,333 34

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Jonathan H. Pugh	Feb.	4th,	1870	133 33
Thomas Hare		4th,		266 67
Thomas Hare		24th,		368 00
Jacob S. Fish		24th,		368 40
John R. Brownholz	March	8th,		66 67
David F. Clinger		8th,		66 67
Peter Miller		8th,		450 00
Thomas Hare		9th,		266 67
Jonathan H. Pugh		11th,		333 33
Scattergood & Dunlery		12th,		66 67
Robert C. Williams		15th,		133 33
Charles W. Williams		15th,		66 67
Wm. H. Shelmerdine	May	4th,		1,333 34
Jabez Lewis		20th,		266 66
James Durnell		21st,		80 00
George C. Hoeflich		21st,		10 00
Ezra Pratt		21st,		100 00
Horatio Roop		21st,		66 67
Matthew Walker		23d,		25 00
John Bateman		24th,		66 67
Ezra Willitts		24th,		25 00
R. C. Shelmerdine	June	21st,		66 67
John R. Brownholz	Dec.	2d,		66 66
Samuel Nelson	August	5th,	1868	150 00
Samuel Nelson	May	19th,	1870	25 00
Wm. B. Wharton	Aug.	13th,	1868	100 00
Thomas Nelson	March	26th,	1869	100 00
Samuel Bowers	Aug.	20th,	1868	10 00

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A. C. Brown	Aug. 5th, 1868	$250 00
A. C. Brown	March 2d, 1869	333 33
A. C. Brown	July 6th, 1869	183 33
A. C. Brown	Oct. 9th, 1869	680 00
A. C. Brown	March 31st, 1870	350 69
Swain Thackara	April 12th, 1869	100 00
John P. Harker	May 17th, 1869	20 00
Matthew Walker	May 19th, 1870	50 00
Jacob S. Fish	May 19th,	452 50
Thomas S. Hare	May 19th,	555 00
Jonathan H. Pugh	May 19th,	540 00
Peter Miller	May 19th,	355 00
John R. Brownholz	May 19th,	66 66
R. C. Shelmerdine	May 19th,	25 00
Wm. H. Shelmerdine	May 19th,	570 12
Ezra Willetts	May 19th,	30 00
R. F. Shannon	May 19th,	50 00
W. Irving Vinal	May 19th,	75 00
S. Arbuckle	August 5th, 1868	50 00
George Meyers	March 12th, 1870	15 00
		$16,387 05

Endorsed: J. N. P. Ex. "L," C. P. C., U. S. Com'r. S'g'd, T. H. J. R. A. S. J. S. F. T. J. C.

308 *List of Debts Secured by Bond and Mortgage in the Suit of John W. Thackara* vs. *The Fairmount Gold and Silver Mining Company.*

A. C. Brown	Aug. 5th, 1868	$250 00
"	March 2d, 1869	333 33
"	July 6th, 1869	183 33
"	Oct. 9th, 1869	680 00
"	March 31st, 1870	350 69
Swain Thackara	April 12th, 1869	100 00
John P. Harker	May 17th, 1869	20 00
		$1,917 35

Endorsed: J. H. P. Ex. "M," C. P. C., U. S. Com'r. S'g'd T. H. J. R. A. S. J. S. F.

List of Debts not Secured by the Bond and Mortgage in the Suit of John W. Thackara vs. *The Fairmount Gold and Silver Mining Company.*

John W. Thackara	Dec. 13th, 1871	$10,000 00
"	April 17th, 1872	1,789 50
"	April 3d, 1872	30 00
"	April 3d, 1872	20 00

A. C. Brown	April 30th, 1872	$60 00
“	May 24th, 1872	25 00
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“	July 2d, 1872	190 00
“	Aug. 15th, 1872	500 00
“	Aug. 28th, 1872	250 00
		$12,864 50

Endorsed: J. H. P. Ex. “N,” C. P. C., U. S. Com'r. T. H. J. R. A. S. J. S. F.

List of Indebtedness of the Company to Jonathan H. Pugh

Jonathan H. Pugh	Aug. 5, 1868	$50 00
“	March 26, 1869	250 00
“	July 9, 1869	333 33
“	Sept. 20, 1869	133 33
“	Oct. 19, 1869	66 67
“	Feb. 4, 1870	133 33
“	March 11, 1870	333 33
“	May 19, 1870	540 00

Endorsed: J. H. P. Ex. “O,” C. P. C., U. S. Com'r. T. H. J. R. A. S. J. S. F. T. J. C.

310 *List of Indebtedness of the Company to Thomas Hare.*

Thomas Hare	Aug. 5th, 1868	$220 00
“ “	Mar. 2d, 1869	333 34
“ “	March 29th, 1869	250 00
“ “	July 9th, 1869	666 67
“ “	Sept. 20th, 1869	333 33
“ “	Oct. 19th, 1869	66 67
“ “	Nov. 16th, 1869	1,333 34
“ “	Feb. 4th, 1870	266 67
“ “	Feb. 24th, 1870	368 00
“ “	March 9th, 1870	266 67
“ “	May 19th, 1870	555 00

Endorsed: Ex. “O 1,” C. P. C., U. S. Com'r. J. H. P. T. H. J. R. A. S. J. S. F. T. J. C.

List of Notes Controlled by Trustees which are Intended to be Secured by the Bond and Mortgage.

Mathew Walker	Aug. 5, 1868	$50 00
Jacob S. Fish	Aug. 5, 1868	100 00
Samuel Nelson	Aug. 5, 1868	150 00
Thomas Hare	Aug. 5, 1868	220 10
William Williams	Aug. 5, 1868	20 00
Horatio Roop	Aug. 5, 1868	80 00

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Jonathan H. Pugh	Aug.	5, 1868	$50 00
Gustavus Geissert	Aug.	5, 1868	100 00
Peter Miller	Aug.	6, 1868	200 00
J. Thornton Weaver	Aug.	7, 1868	20 00
John Bateman	Aug.	11th, 1868	25 00
Ambrose H. Prichett	Jan.	18, 1869	70 00
George Myers	Jan.	29, 1869	10 00
Myers Homiller	Feb.	3d, 1869	10 00
John R. Brownholz	Feb.	22d, 1869	50 00
Peter Miller	Feb.	22d, 1869	100 00
Thomas F. Scattergood	Feb.	23d, 1869	15 00
Edward S. McGlue	Feb.	24th, 1869	20 00
Christian Van. Gunden	Feb.	27th, 1869	10 00
R. C. Shelmerdine, M. D.	Feb.	27th, 1869	50 00
Wm. B. Moylan	Feb.	27th, 1869	20 00
George M. Highley	Feb.	27th, 1869	20 00
Wm. H. Shelmerdine	March	2d, 1869	100 00
Thomas Hare	Aug.	5, 1868	333 34
Jacob S. Fish	Aug.	5, 1868	333 33
Wm. H. Shelmerdine	March	26th, 1869	250 00
Jonathan H. Pugh	March	26, 1869	250 00
Thomas Hare	March	29th, 1869	250 00
Peter Miller	March	29th, 1869	50 00
J. L. Sleeper & Son	April	3d, 1869	15 00
Aaron S. Dunlery	April	12th, 1869	15 00
Ezra Willitts	April	17th, 1869	100 00
Matthew Walker	May	31st, 1869	50 00
Samuel B. Ely	June	18th, 1869	80 00

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John B. Ely	June	18th, ~~1869~~ 1869	70 00
Jonathan H. Pugh	July	9th, ~~1879~~ "	333 33
Thomas Hare	July	9th, ~~1879~~ "	666 67
Mary Ann Vinal	July	15th, ~~1879~~ "	100 00
Matthew Walker	July	24th, ~~1879~~ "	133 33
Israel L. Fish	Aug.	28th, ~~1879~~ "	15 00
Peter Miller	Aug.	30th, ~~1879~~ "	200 00
John R. Brownholz	Sept.	9th, ~~1879~~ "	30 00
Jonathan H. Pugh	Sept.	20th, ~~1879~~ "	133 33
Thomas Hare	Sept.	20th, ~~1879~~ "	333 33
Thomas Hare	Oct.	19th, ~~1879~~ "	66 67
Jonathan H. Pugh	Oct.	19th, ~~1879~~ "	66 67
Wm. H. Shelmerdine	Oct.	19th, ~~1879~~ "	10 00
Thomas Hare	Nov.	16th, ~~1879~~ "	1,333 34
Jonathan H. Pugh	Feb.	4th, 1870	133 33
Thomas Hare	Feb.	4th, 1870	266 67
Thomas Hare	Feb.	24th, 1870	368 00

Jacob S. Fish	Feb. 24th, 1870	$368 40
John R. Brownholz	March 8th, 1870	66 67
Peter Miller	March 8th, 1870	450 00
David I. Clinger	March 8th, 1870	66 67
Thomas Hare	March 9th, 1870	266 67
Jonathan H. Pugh	March 11th, 1870	333 33
Scattergood & Dunlery	March 12th, 1870	66 67
Robert C. Williams	March 15th, 1870	133 33
Charles W. Williams	March 15th, 1870	66 67
Wm. H. Shelmerdine	May 4th, 1870	1,333 34
Samuel Nelson	May 19th, 1870	25 00

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Jabez Lewis	May 20th, 1870	266 66
James Durnell	May 21st, 1870	80 00
Ezra Pratt	May 21st, 1870	100 00
Horatio Roop	May 21st, 1870	66 67
Matthew Walker	May 23d, 1870	25 00
John Bateman	May 24th, 1870	66 67
Ezra Willitts	May 24th, 1870	25 00
R. C. Shelmerdine	June 21st, 1870	66 67
Jno. R. Brownholz	Dec. 2d, 1870	66 66
		$11,525 52

List of Notes not Controlled by the Trustees, but which are Secured by the Bond and Mortgage.

Samuel Arbuckle	Aug. 5th, 1868	50 00
George Meyers	March 12th, 1870	15 00
Samuel Bowers	Aug, 20th, 1868	10 00
Thomas Nelson	March 26th, 1869	100 00
William B. Wharton	Aug. 13th, 1868	100 00
A. C. Brown	Aug. 5th, 1868	250 00
A. C. Brown	March 2d, 1869	333 33
A. C. Brown	July 6th, 1869	183 33
A. C. Brown	Oct. 9th, 1869	680 00
A. C. Brown	March 31st, 1870	350 69
Swain Thackara	April 12th, 1869	100 00
John P. Harker	May 17th, 1869	20 00
		$2,192 35

314 *List of Debts intended to be Secured by the Bond and Mortgage, but for which no Notes were issued by the Company.*

Matthew Walker	May 19th, 1870	$50 00
Jacob S. Fish	“ “	452 50
Thomas Hare	“ “	555 00
Jonathan H. Pugh	“ “	540 00

Peter Miller	May 19th, 1870	$355 00
John R. Brownholz	" "	66 66
R. C. Shelmerdine	" "	25 00
W. H. Shelmerdine	" "	570 12
Ezra Willets	" "	30 00
R. F. Shannon	" "	50 00
W. Irving Vinal	" "	75 00
		$2,769 28

Endorsed: S'g'd J. H. P. Ex. "P," C. P. C., U. S. Com'r. T. H. J. R. A. S. J. S. F.

[Five-cent internal revenue stamp cancelled.]

This instrument of writing, made this twenty-second day of August, A. D. eighteen hundred and seventy, by and between the "Fairmount Gold and Silver Mining Company," a corporation created by the Legislature of Pennsylvania, of the one part, and Thomas Hare and Jonathan H. Pugh, both of the city of 315 Philadelphia, of the other part. Whereas the said "Fairmount Gold and Silver Mining Company" being in need of money to complete their works in Colorado and to carry out the purposes of their incorporation, were authorized and empowered by a vote of the stockholders of said company in meeting assembled, on the 16th day of June, A. D. 1868, to borrow money for the said purposes on bond and mortgage, as to the directors of said company should seem best; and whereas the said directors of said company, for and on behalf of said company, have from time to time borrowed various sums of money, which moneys have been laid out and expended for the purposes aforesaid; and which said sums of money now amount in the aggregate, with interest added, to the sum total of seventeen thousand dollars; and whereas the said directors of the said company, for said various sums of money so loaned to said company, have hitherto given to the lenders of the said sums of money, their printed promises to repay, with interest, in gold, at the rate of six per cent. per annum, the said loans so made to the company, at the same time promising and agreeing to, and with the said lenders, to secure said promises to pay by a bond and mortgage, on all the property of said company in the Territory of Colorado; and whereas, at a meeting of the directors of the said Fairmount Gold 316 and Silver Mining Company, held on the 19th day of August, A. D. 1870, it was ordered and directed that a bond and mortgage on all the real and personal property of the said company in the said Territory of Colorado should be made and executed, and delivered to the said Thomas Hare and Jonathan H. Pugh, in trust, the better to secure the said sums so loaned to said company as aforesaid in accordance with the agreement made as aforesaid with the lenders thereof, and it was then ordered and directed that the proper officers of said company should make, execute, and deliver to the said Thomas Hare and Jonathan H. Pugh said bond and mortgage as aforesaid; and whereas a bond and mortgage as aforesaid have been made, executed, and delivered for the sum of seventeen thousand dollars, with interest in gold, payable half yearly, by the said "Fairmount Gold and Silver Mining Company" to the said Thomas Hare and Jonathan H. Pugh, trustees, as aforesaid, which bond and mortgage are of even date herewith—

Now it is hereby mutually agreed and declared by the said parties of the first and second part, as follows:

First. That the said Thomas Hare and Jonathan H. Pugh hold the aforesaid bond and mortgage in trust for the benefit of the lenders of the aforesaid moneys to the said company, for 317 which said loans the lenders now hold the printed promises to pay of the said company.

Second. That if the said company should pay off or redeem all said promises to pay before the said bond and mortgage shall become due, or after the same shall become due and payable, but before execution or process issue thereon, then the said bond and mortgage shall be taken as paid and satisfied, and the same shall be cancelled.

Third. That if any part of said promises to pay shall be redeemed and paid by the said company before the said bond and mortgage shall become due, or before the same shall be sued out, such part or amount of said promises to pay, so redeemed and paid, shall be deducted from the said bond and mortgage, or allowed as credited thereon.

Fourth. That if the said property so mortgaged as aforesaid is sold, and does not yield the full amount for which said mortgage was executed, then the creditors so secured by said mortgage, shall be paid a *pro rata* share of their various claims.

Fifth. Should the said property so mortgaged as aforesaid sell for more than the amount due on said mortgage, then such excess over the value of said principal and interest shall be paid 318 over to the company.

Sixth. In the event of the death or resignation of either or both of the said trustees, the said company shall have the power to nominate and appoint others in their place or places.

In witness whereof, the said party of the first part, by its proper officers, has hereto set its corporate seal, and the party of the second part have set their hands and seals, the day and year first above written.

[SEAL.] (S'g'd) CHAS. H. BROWN,
Pres't "Fairmount Gold and Silver Mining Co."
(S'g'd) T. J. CLINGER,
Sec'y "Fairmount Gold and Silver Mining Co."
(S'g'd) J. H. PUGH. [SEAL.]
(S'g'd) THOS. HARE. [SEAL.]

Sealed and delivered in the presence of—
(S'g'd) W. N. ASHMAN.
THOMAS J. ASHTON.

[Five-cent internal revenue stamp cancelled.]

Endorsed : Agreement between the "Fairmount Gold and Silver Mining Company" and Thomas Hare and Jonathan H. Pope. (S'g'd) J. H. P. Ex. Q, C. P. C., U. S. Com'r. T. H. J. S. F. W. N. A. T. J. C.

319 Extract from minutes of a special meeting of the board of directors, held Philadelphia, February 8th, 1873.

"Resolved, That the board of directors authorize the conversion of certain outstanding and unpaid certificates of indebtedness of the Fairmount Gold and Silver Mining Company, being numbered from 1 to 87, both numbers inclusive, and No. 89 to 100, both numbers inclusive, into stock of the said company at the par value thereof, upon the surrender of the said certificates of indebtedness by the holders thereof: Provided that the holders of the said certificates of indebtedness convert the same into stock of the said company, at the par value thereof, within ten days from the date of the passage of this resolution, and all the holders convert."

Endorsed : S'g'd J. H. P. Ex. "R," C. P. C., U. S. Com'r. T. H. J. R. A. S. J. S. F.

320 *List of Converted Debts.*

Matthew Walker	Aug. 5th, 1868	$50 00
Jacob S. Fish	Aug. 5th, 1868	100 00
Thomas Hare	Aug. 5th, 1868	220 00
William Williams	Aug. 5th, 1868	20 00
Horatio Roop	Aug. 5th, 1868	80 00
Jonathan H. Pugh	Aug. 5th, 1868	50 90
Gustavus Geissert	Aug. 5th, 1868	100 00
Peter Miller	Aug. 6th, 1868	200 00
J. Thornton Weaver	Aug. 7th, 1868	20 00
John Bateman	Aug. 11th, 1868	25 00
Ambrose H. Prichett	Jan. 18th, 1869	70 00
George Myers	Jan. 29th, 1869	10 00
Myers Homiller	Feb. 3d, 1869	10 99
John R. Brownholz	Feb. 22d, 1869	50 00
Peter Miller	Feb. 22d, 1869	100 00
Thomas F. Scattergood	Feb. 23d, 1869	15 00
Edward S. McGlue	Feb. 24th, 1869	20 00
Christian Van Gunden	Feb. 27th, 1869	10 00
R. C. Shelmerdine, M. D.	Feb. 27th, 1869	50 00
Wm. B. Moylan	Feb. 27th, 1869	20 00
Geo. M. Highley	Feb. 27th, 1869	20 00
Wm. H. Shelmerdine	Mch. 2d, 1869	100 00

Thomas Hare	Aug. 5th, 1868	$333 34
Jacob S. Fish	Aug. 5th, 1868	333 33
Wm. H. Shelmerdine	Mch. 26th, 1869	250 00
Jonathan H. Pugh	Mch. 25th, 1869	250 00
Thomas Hare	Mch. 29th, 1869	250 00

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Peter Miller	Mch. 29th, 1869	50 00
J. L. Sleeper & Son	April 3d, 1869	15 00
Aaron S. Dunlery	April 12th, 1860	15 00
Ezra Willits	April 17th, 1869	100 00
Matthew Walker	May 31st, 1869	50 00
Samuel B. Ely	June 18th, 1869	80 00
John B. Ely	June 18th, 1869	70 00
Jonathan H. Pugh	July 9th, 1869	333 33
Thomas Hare	July 9th, 1869	666 67
Mary Ann Vinal	July 15th, 1869	100 00
Mathew Walker	July 24th, 1869	133 33
Israel L. Fish	Aug. 28th, 1869	15 00
Peter Miller	Aug. 30th, 1869	200 00
John R. Brownholz	Sept. 9th, 1869	30 00
Jonathan H. Pugh	Sept. 20th, 1869	133 33
Thomas Hare	Sept. 28th, 1869	333 33
Thomas Hare	Oct. 19th, 1869	66 67
Jonathan H. Pugh	Oct. 19th, 1869	66 67
William H. Shelmerdine	Oct. 19th, 1869	10 00
Thomas Hare	Nov. 16th, 1869	1,333 34
Jonathan H. Pugh	Feb. 4th, 1870	133 33
Thomas Hare	Feb. 4th, 1870	266 67
Thomas Hare	Feb. 24th, 1870	368 00
Jacob S. Fish	Feb. 24th, 1870	368 40
John R. Brownholz	Mch. 8th, 1870	66 67
David T. Clinger	Mch. 8th, 1870	66 67
Peter Miller	Mch. 8th, 1870	450 00
Thomas Hare	Mch. 9th, 1870	266 67

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Jonathan H. Pugh	Mch. 11th, 1870	333 33
Scattergood & Dunlery	Mch. 12th, 1870	66 67
Robert C. Williams	Mch. 15th, 1870	133 33
Charles W. Williams	Mch. 15th, 1870	66 67
Wm. H. Shelmerdine	May 4th, 1870	1,333 34
Jabez Lewis	May 20th, 1870	266 66
James Durnell	May 21st, 1870	80 00
George C. Hoeflich	May 21st, 1870	10 00
Ezra Pratt	May 21st, 1870	100 00
Horatio Roop	May 21st, 1870	66 67
Matthew Walker	May 23d, 1870	25 00

John Bateman	May 24th, 1870	$66 67
Ezra Willetts	May 24th, 1870	25 00
R. C. Shelmerdine	June 21st, 1870	66 67
John R. Brownholz	Dec. 2d, 1870	66 66
Samuel Arbuckle	Aug. 5th, 1868	50 00
Matthew Walker	May 19th, 1870	50 00
Jacob S. Fish	May 19th, 1870	452 50
Thomas Hare	May 19th, 1870	555 00
Jonathan H. Pugh	May 19th, 1870	540 00
Peter Miller	May 19th, 1870	355 00
Jno. R. Brownholz	May 19th, 1870	66 66
R. C. Shelmerdine	May 19th, 1870	25 00
W. H. Shelmerdine	May 19th, 1870	570 12
Ezra Willitts	May 19th, 1870	30 00
W. Irving Vinal	May 19th, 1870	75 00
Abram C. Brown	May 19th, 1870	375 00
		$14,395 70

323 Endorsed: J. H. P. Ex. "S," C. P. C., U. S. Com'r. S'g'd T. H. J. R. A. S. J. S. F.

List of Debts not Converted.

Abram C. Brown	Aug. 5th, 1868	$250 00
Samuel Nelson	Aug. 5th, 1868	150 00
W. B. Wharton	Aug. 5th, 1868	100 00
Abram C. Brown	Mar. 2d, 1869	333 33
Thomas Nelson	Mar. 26th, 1869	100 00
Swain Thackara	Apr. 12th, 1869	100 00
Jno. P. Harker	May 17th, 1869	20 00
Abram C. Brown	July 6th, 1869	183 33
Abram C. Brown	Oct. 9th, 1869	680 00
Abram C. Brown	Mar. 31st, 1869	350 69
Samuel Nelson	May 19th, 1869	25 00
Samuel Bowers	Aug. 20th, 1868	10 00
R. F. Shannon	May 19th, 1870	50 00

Endorsed: J. H. P. Ex. "T," C. P. C., U. S. Com'r. S'g'd T. H. J. R. A. S. J. S. F.

324 Endorsed: 124. Thomas Hare and Jonathan H. Pugh, trustees, &c., complainants, *vs.* The Fairmount Gold and Silver Mining Company and G. B. Reed *et al.*, defendants. Depositions by pl'ffs. U. S. C. court, district of Colorado. Opened, published, and filed by order court Dec'r 3d, A. D. 1878. S'g'd Edward F. Bishop, clerk.

And afterwards and on, to wit, the 23d day of December, A. D. 1878, there was filed in said court and in said cause a certain stipulation as to filing of papers as evidence.

And the said stipulation is in words and figures as follows, to wit:

Stipulation as to Evidence, &c.

United States Circuit Court, District of Colorado.

THOMAS HARE and JONATHAN H. PUGH, Trustees, &c., Complainants,
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY *et als.*, Defendants. } Stipulation.

325 It is agreed and stipulated that a certified transcript of the record, and all orders and papers of and in the common-law suit of John W. Thackara against thn Fairmount Gold and Silver Mining Company, including the execution, sheriff's levy, sale, and return, and a copy of the certificate of sale to said Thackara by the sheriff, and the assignment or transfer of said certificate to G. B. Reed, and copy of deed from sheriff to Reed of same property, all from Clear Creek county, Colorado, be filed in this case as evidence for both parties; and also that there be filed as evidence, a certified copy of the act of the Pennsylvania Legislature, incorporating the Fairmount Gold and Silver Mining Company aforesaid.

It is further stipulated that the defendant, G. B. Reed, is the same person who brought the suit as attorney for said Thackara in Clear Creek county, and to whom Thackara assigned the certificate Dec. 10, 1878.

(S'g'd) JOHN Q. A. KING,
Att'y for Complainants.
(S'g'd) G. B. REED,
For Def'ts.

Endorsed: 124. Hare and Pugh, trustees, &c., *vs.* Fairmount Gold and Silver Mining Company *et als.* Stipulation as to filing of certain papers as evidence. Filed Dec. 23, 1878. S'g'd Edward F. Bishop, clerk. King, att'y.

326 And afterwards, and on, to wit, the 23d day of December, A. D. 1878, came again the said complainants, by J. Q. A. King, Esq., their solicitor, and filed in said court and in said cause, a transcript of proceedings theretofore had in the district court, within and for the county of Clear Creek, State of Colorado.

And the said transcript of proceedings is in words and figures as follows, to wit:

Transcript from District Court, Clear Creek County.

JOHN W. THACKARA *vs.* FAIRMOUNT G. AND S. M. CO.

327 STATE OF COLORADO,
Clear Creek County, } *ss:*

Pleas continued and held at the court-house in Georgetown, in and for the county of Clear Creek, in the 2d judicial district of the Territory of Colorado, before the Hon. James B. Belford, one of the justices of the supreme court of said Territory, and sole presiding judge of the said district. To the April term, A. D. 1873.

Present: Hon. James B. Belford, judge; Byron L. Carr, district attorney; John R. Cleaveland, clerk, by Ed. C. Purmalee, deputy; Patrick A. Skoehan, sheriff; by P. S. Baily, deputy
328 sheriff.

JOHN W. THACKARA vs. FAIRMOUNT GOLD AND SILVER MINING COMPANY. } No. 907. In Debt Attachment.

Be it remembered that heretofore, to wit, on the 22d day of March, A. D. 1873, the said plaintiff, by G. B. Reed, Esq., his attorney, filed in the clerk's office of the court aforesaid his præcipe for attachment writ, affidavit, and bond in attachment, together with his declaration, which said praæcipe, affidavit, bond, and declaration are respectively in records and figures following, to wit:

Præcipe.

TERRITORY OF COLORADO, *County of Clear Creek,* } *ss:*

In the District Court 2d Judicial District in and for said County. To the April Term, 1873.

JOHN W. THACKARA vs. FAIRMOUNT GOLD AND SILVER MINING COMPANY. } In a Plea of Debt, $21,902.06 Damages, $4,000.

The clerk will please issue writ of attachment against the
329 estate of the above-named defendant, a foreign corporation, to be directed to the sheriff of Clear Creek county to execute and for the amount as above set forth.

G. B. REED, *Att'y for Pl'ff.*

To Jno. R. Cleaveland, clerk of said district court.

Affidavit.

TERRITORY OF COLORADO, *County of Clear Creek,* } *ss:*

In the District Court, 2d Judicial District, in and for said County. To the April Term, A. D. 1873.

John W. Thackara being first duly sworn on oath, deposes and says, the Fairmount Gold and Silver Mining Company is justly indebted to him in the sum of twenty-one thousand nine hundred and two dollars and six cents, and that the above said amount and indebtedness is of the following nature, to wit: Sixteen thousand three hundred and sixty-seven dollars and forty-six cents are for

said company's seventeen certain written obligatory contracts, and two thousand nine hundred and eighty-four dollars and sixty cents is a book account of affiants against said company, and also the
sum of two thousand five hundred and fifty dollars is a bal-
330 ance due on a contract made and entered into by and between
affiant and said company.

And affiant further avers that said Fairmount Gold and Silver Mining [Company] is a foreign corporation. Therefore he prays an attachment may issue.

JOHN W. THACKARA.

Subscribed and sworn to before me, this 22d day of March, A. D. 1873.

JOHN R. CLEAVELAND, *Clerk.*
ED. C. PARMELEE, *Deputy.*

Bond.

Know all men by these presents, that John W. Thackara, as principal, and Wm. Spruance, Henry C. Newcomb, Wm. M. Clark, and Joseph A. Love, as sureties, are held and firmly bound unto the Fairmount Gold and Silver Mining Company in the penal sum of forty-three thousand eight hundred and sixty dollars and twelve cents, lawful money of the United States, for the payment of which well and truly to be made we hereby bind ourselves and our heirs, executors and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals, this 22d day of March, A. D. 1873.

The condition of the above obligation is such that, whereas the
above-bounden John W. Thackara hath on the day of the
331 date hereof prayed an attachment out of the district court
of the 2d judicial district in and for the county of Clear Creek, at the suit of herself against the estate of the above-named Fairmount Gold and Silver Mining Company for the sum of twenty-one thousand nine hundred and two dollars and six cents, and the same being about to be sued out of said court, returnable on the 1st day of April next to the term of the court then to be holden.

Now, if the said John W. Thackara shall prosecute his suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said Fairmount Gold and Silver Mining Company all such costs in said suit, and such damages as shall be awarded against the said John W. Thackara, his heirs, executors, or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, and all damages which may accrue to the said Fairmount Gold and Silver Mining Company, by reason of any excessive levy made under any writ of attachment issued in this cause, then the above obligation to be void, otherwise to remain in full force and effect.

JOHN W. THACKARA. [L. S.]
WM. SPRUANCE. [L. S.]
HENRY E. NEWCOMB. [L. S.]
WILLIAM M. CLARK. [L. S.]
J. A. LOVE. [L. S.]

332 *Declaration.*

TERRITORY OF COLORADO, } ss:
County of Clear Creek, }

In the District Court, 2d Judicial District, in and for said County.
To the April Term, A. D. 1873.

JOHN W. THACKARA
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY. } In Debt.

John W. Thackara, the plaintiff in this suit, by G. B. Reed, his attorney, complains of the Fairmount Fold and Silver Mining Company, the defendant, a foreign corporation doing business in said Clear Creek County, which has been ———— of a plea that it render to the said plaintiff the sum of twenty-one thousand nine hundred and two dollars and six cents, lawful money of the United States, which it justly owes and unjustly detains from him, said plaintiff. For that whereas the said defendant heretofore, to wit, on the 3d day of May, A. D. 1872, at Philadelphia, to wit, at the county of Clerk Creek, in the Territory of Colorado, by its certain writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto the said plaintiff in the sum of twenty dollars, together with interest thereon at the rate of six per cent. per annum, part and parcel of the sum above demanded.

333 And whereas also the said defendant heretofore, to wit, on the 30th day of April, A. D. 1872, at Philadelphia, to wit, at Clear Creek county, in the Territory of Colorado, by its certain other writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto the said plaintiff in the sum of thirty dollars, with interest thereon at the rate of six per cent. per annum, part and parcel of the sum above demanded. And whereas also, the said defendant heretofore, to wit, on the 17th day of April, A. D. 1872, at Philadelphia, to wit, at Clear Creek County, in the Territory of Colorado, by its certain other writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto the said plaintiff in the sum of one thousand seven hundred eighty-nine dollars and fifty cents, with interest thereon at the rate of six per cent. per annum, which said interest, as by the said writing obligatory, is made payable in gold; and the said plaintiff avers that said interest, to be payable in gold as therein expressed, was, at the time the same became due, and still is, worth fourteen per cent. per annum in currency of the United States, which said premium, over and above the said interest as aforesaid, said plaintiff is entitled to receive in currency in addition to the said interest as aforesaid, part and parcel of the sum above demanded.

And whereas also the defendant heretofore, to wit, on the 13th day of December, A. D. 1871, at Philadelphia, to wit, at Clear Creek county, in the Territory of Colorado, by its certain other

writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto the said plaintiff in the sum of ten thousand dollars, with interest thereon at the rate of six per cent. per annum, which said interest, as by said writing obligatory, is made payable in gold; and the said plaintiff avers that the said
334 interest, to be paid in gold as therein expressed, was, at the time the same became due, and still is, worth fourteen per cent per annum in the currency of the United States, part and parcel of the sum first above demanded.

And whereas also the said defendant heretofore, to wit, on the 12th day of April, A. D. 1869, at Philadelphia, to wit, at Clear Creek county, in the Territory of Colorado, by its certain other writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto Swain Thackara, or his order, in the sum of one hundred dollars, with interest thereon at the rate of six per cent. per annum, which said interest, as by said writing obligatory, is made payable in gold; and the plaintiff avers that the said writing obligatory, after the *meeting* and delivery thereof to the said Swain Thackara, was duly endorsed under the hand of said Swain Thackara, and by him delivered to said plaintiffs, and the said sum of money therein expressed duly ordered to be paid to and become the property of said plaintiff, and the said plaintiff further avers that the said interest, payable in gold as aforesaid, at the time the same became due, and still is, worth fourteen per cent. per annum in the currency of the United States, at and being part and parcel of the sum first above mentioned.

And whereas also the said defendant heretofore, to wit, on the 17th day of May, A. D. 1869, at Philadelphia, to wit, at
335 Clear Creek county, in the Territory of Colorado, by its certain other writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto John P. Harker, or his order, in the sum of twenty dollars, with interest thereon at the rate of six per cent. per annum, which said interest, as by said writing obligatory, is made payable in gold; and the plaintiff avers that the said writing obligatory, after the making and delivery thereof to the said John P. Harker, was duly endorsed under the hand of the said John P. Harker and delivered to one Swain Thackara, and by the said Swain Thackara was duly endorsed under his hand and delivered to said plaintiff, and the said sum of money therein expressed duly ordered to be paid to and became the property of said plaintiff; and the said plaintiff further avers that the said interest, payable in gold as aforesaid at the time the sum become due, and still is worth fourteen per cent. per annum in the currency of the United States, part and parcel of the amount first above mentioned.

And whereas also the said defendant heretofore, to wit, on the 5th day of August, A. D. 1868, at Philadelphia, to wit, at Clear Creek county, in the Territory of Colorado, by its certain other writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto Abram C. Brown, or to his order, in the

sum of two hundred and fifty dollars, with interest thereon at the
rate of six per cent. per annum, which said interest, as by
336 said writing obligatory, is made payable in gold; and the
plaintiff avers that the said writing obligatory, after the
making and delivery thereof to the said Abram C. Brown, was duly
endorsed under the hand of the said Abram C. Brown, and by him
delivered to the said plaintiff, and the said sum of money therein
expressed, duly ordered to be paid to and became the property of
said plaintiff; and the said plaintiff further avers that the said interest,
payable in gold as aforesaid, at the time the same became due,
and still is, worth fourteen per cent. per annum in the currency of
the United States, part and parcel of the amount first above demanded.

And whereas also the said defendant heretofore, to wit, on the 5th day of August, A. D. 1868, at Philadelphia, to wit, at Clear Creek County, in the Territory of Colorado, by its certain other writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto Abram C. Brown, or to his [order,] in the sum of three hundred and thirty-three dollars and thirty-three cents, with interest threon, at the rate of six per cent. per annum, which said interest, as by said writing obligatory, is made payable in gold; and the plaintiff avers that the said writing obligatory, *of the* making and delivery thereof to the said Abram C. Brown, was duly endorsed under the hand of said Abram C. Brown, and by him delivered to
the said plaintiff, and the said sum of money therein expressed
337 duly ordered to be paid to and become the property
of said plaintiff; and the said plaintiff further avers that the
said interest, payable in gold as aforesaid, at the time it became
due, and still is, worth fourteen per cent. per annum in the currency
of the United States, part and parcel of the sum first above demanded.

And whereas also the said defendant heretofore, to wit, July 6, A. D. 1869, at Philadelphia, to wit, at Clear Creek county, in the Territory of Colorado, by its certain other writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto Abram C. Brown, or to his order, in the sum of one hundred and eighty-three dollars and thirty-three cents, with interest thereon at the rate of six per cent. per annum, which said interest, by said writing obligatory, is made payable in gold; and the plaintiff avers that the said writing obligatory, after the making and delivery thereof to the said Abram C. Brown, was duly endorsed under the hand of said Abram C. Brown, and by him delivered to the said plaintiff, and the said sum of money therein expressed duly ordered to be paid to and become the property of said plaintiff; and the said plaintiff further avers that said interest, payable in gold as aforesaid, at the time the same become due, and still is, worth fourteen per cent. per annum in the currency of the United
338 States, part and parcel of the sum first above demanded.

And whereas also the said defendant heretofore, to wit, on the 9th day of October, A. D. 1869, at Philadelphia, to wit, at Clear Creek county, in the Territory of Colorado, by its certain other writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto Abram C. Brown, or to his order, in the sum of six hundred and eighty dollars, with interest thereon at the rate of six per cent. per annum, which said interest, as by said writing obligatory, is made payable in gold; and the plaintiff avers that the said writing obligatory, after the making and delivery thereof to the said Abram C. Brown, was duly endorsed under the hand of the said Abram C. Brown, and by him delivered to the plaintiff, and the said sum of money therein expressed duly ordered to be paid to and become the property of said plaintiff; and the said plaintiff further avers that the said interest, payable in gold, as aforesaid, at the time the same [become] due, and still is, worth fourteen per cent. premium in the currency of the United States, part and parcel of the sum first-above demanded.

And whereas also the said defendant heretofore, to wit, on the
31st day of March, A. D. 1870, at Philadelphia, to wit, at Clear
Creek county, in the Territory of Colorado, by its certain
339 other writing obligatory, sealed with its seal, acknowledged
itself to be held and firmly bound unto Abram C. Brown, or
to his order, in the sum of three hundred and fifty dollars and sixty-nine cents, with interest thereon, at the rate of six per cent. per annum, which said interest, as by said writing obligatory, is made payable in gold; and the plaintiff avers that the said writing obligatory, after the making and delivery thereof to the said Abram C. Brown, was duly endorsed under the hand of the said Abram Brown, and by him delivered to the said plaintiff, and the said sum of money therein expressed duly ordered to be paid to and become the property of said plaintiff; and the said plaintiff further avers that the said interest, payable in gold, as aforesaid, at the time the same became due, and still is, worth fourteen per cent. premium in the currency of the United States, part and parcel of the sum first-above demanded.

And whereas also the said defendant heretofore, to wit, on the 26th day of March, A. D. 1872, at Philadelphia, to wit, *to wit*, at Clear Creek county, in the Territory of Colorado, by its certain other writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto Abram C. Brown, or to his order, in the sum of fifteen dollars, with interest thereon, at the rate of
six per cent. per annum; that the said writing obligatory, after
the making and delivery thereof to the said Abram C.
340 Brown, was duly endorsed under the hand of said Abram
C. Brown, and by him delivered to the said plaintiff, and the
said sum of money therein expressed duly ordered to be paid to and become the property of said plaintiff, part and parcel of the said sum first-above demanded.

And whereas also the said defendant heretofore, to wit, on the 30th day of April, A. D. 1872, at Philadelphia, to wit, at Clear

Creek county, in the Territory of Colorado, by its certain other writing obligatory sealed with its seal, acknowledged itself bound to be held and firmly bound unto Abram C. Brown, or to his order, in the sum of sixty dollars, with interest at the rate of six per cent. per annum; and the plaintiffs aver that the writing obligatory, after the making and delivery thereof to the said Abram C. Brown, was duly endorsed under the hand of said Abram C. Brown, and by him delivered to the said plaintiff, and the said sum of money therein expressed duly ordered to be paid to and become the property of said plaintiff, parcel and part of the said sum first above demanded.

And whereas also the said defendant heretofore, to wit, on the 24th day of May, A. D. 1872, at Philadelphia, to wit, at the county of Clear Creek, in the Territory of Colorado, by its certain other writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto Abram C. Brown, or to his orders, in the sum of twenty-five dollars, with interest at the rate of six per cent. per annum; and the plaintiff avers that the said writing obligatory, after the making and delivery thereof to the said Abram C. Brown, was duly endorsed under the hand of said Abram C. Brown, and by him delivered to the said plaintiff, and the said sum of money therein expressed duly ordered to be paid to and become the property of said plaintiff, part and parcel of the said sum first above demanded.

And whereas also the said defendant heretofore, to wit, on the 2d day of July, A. D. 1872, at Philadelphia, to wit, at Clear Creek county, in the Territory of Colorado, by its certain other writing obligatory, sealed with its seal, acknowledged itself to be held
and firmly bound in the sum of one hundred and ninety dol-
341 lars, with interest at the rate of six per cent. per annum;
and the plaintiff avers that the said writing obligatory, after the making and delivery thereof to the said Abram C. Brown, was duly endorsed under the hand of said Abram C. Brown, and by him delivered to the said plaintiff, and the said sum of money therein expressed duly ordered to be paid to and become the property of said plaintiff, part and parcel of the sum first above demanded.

And whereas also the said defendant heretofore, to wit, on the 15th day of August, A. D. 1872, at Philadelphia, to wit, at Clear Creek county, in the Territory of Colorado, by its certain other writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto Abram C. Brown, or his order, in the sum of five hundred dollars, with interest at the rate of six per cent. per annum; and the plaintiff avers that the said writing obligatory, after the making and delivery thereof to the said Abram C. Brown, was duly endorsed under the hand of said Abram C. Brown, and by him delivered to the said plaintiff, and the said sum of money therein expressed duly ordered to be paid to and become the property of said plaintiff, part and parcel of the said sum first above demanded.

And whereas also the said defendant heretofore, to wit, on the

28th day of August, A. D. 1872, at Philadelphia, to wit, at the county of Clear Creek, in the Territory of Colorado, by its
342 certain other writing obligatory, sealed with its seal, acknowledged itself to be held and firmly bound unto Abram C. Brown, or to his order, in the sum of two hundred and fifty dollars, with interest at the rate of six per cent. per annum; and the plaintiff avers that the said writing obligatory, after the making and delivery thereof to the said Abram C. Brown, was duly endorsed under the hand of said Abram C. Brown, and by him delivered to the said plaintiff, and the said sum of money therein expressed, duly ordered to be paid to and become the property of said plaintiff, part and parcel of the said sum first above demanded.

And whereas also the said defendant heretofore, to wit, on the 22d day of March, A. D. 1873, and in said Clear Creek county aforesaid, was indebted to the plaintiff in twenty-one thousand nine hundred and two dollars and six cents, for the price and value of goods and chattels sold and delivered by the plaintiff to the defendant at its request, and in twenty-one thousand nine hundred and two dollars and six cents, for the price and value of work then and there done, and materials for the same provided by the plaintiff for the defendant at its request, and in twenty-one thousand nine hundred and two dollars and six cents for money then and there lent by the plaintiff to the defendant at its reqeest, and in twenty-one thousand thousand nine hundred and two dollars and six cents
343 for money then and there paid by the plaintiff for use of the defendant at its request, and in twenty-one thousand nine hundred and two dollars and six cents, for money then and there received by the defendant for use of plaintiff, and in two thousand dollars for interest due from the said defendant to the plaintiff, for and in respect of the plaintiff having foreborne and given day of payment of money due from the defendant to the plaintiff at the defendant's request; and in twenty-one thousand nine hundred and two dollars and six cents, found to be due from the defendant to the plaintiff on an account then and there stated between them, which several last mentioned moneys were to be respectively paid by the defendant to the plaintiff on request. Whereby, and by reason of the non-payment of the said several moneys in the said several counts mentioned, an action hath accrued to the plaintiff to demand and have of and from the defendant the several moneys respectively, amounting to the sum of twenty-one thousand nine hundred and two dollars and six cents above demanded.

Yet the defendant hath not paid the sum above demanded, or any part thereof, to the plaintiff's damages to the amount of four thousand dollars, and therefore he brings suit, &c.

G. B. REED,
Att'y for Pl'ffs.

344 *Copies of Accounts and Writings Obligatory Sued on.*

For goods and chattels sold and delivered	$21,902 06
For price of work and materials	21,902 06
For money lent by plaintiff to defendant	21,902 06
For money paid by plaintiff for use of def't	21,902 06
For money received by def't for use of pl'ff	21,902 06
For interest due plaintiff for forbearance	21,902 06
For balance due on account stated	21,902 06

FairmountGold and Silver Mining Company to John W. Thackara, Dr.

For balance due on book account, as per account rendered, and admitted by said company to be the amount due plaintiff	$2,984 60

$117. PHILADELPHIA, *May* 3, 1872.

One day after date the Fairmount Gold and Silver Mining Co. promise to pay to the order of Jno. W. Thackara twenty dollars, in lawful money of the United States, with 6 per cent. interest, upon the presentation of this certificate, and which said certificate is isued to the holder thereof, by and under the provisions of a resolution of the board of directors of date December 30th, 1871.

[SEAL.] JOHN RUSSELL, *President.*
$20.00. ALF'D SMITH, *Treasurer W.*
WM. H. SHELMERDINE, *Sec.*

345 $116. PHILADELPAIA, *April 3d*, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of Jno. W. Thackara thirty dollars, in lawful money of the United States, with 6 per cent. interest, upon the presentation of this certificate, and which said certificate is issued to the holder thereof, by and under the provisions of a resolution of the board of directors of date December 30, 1871.

[SEAL.] JOHN RUSSELL, *President.*
$30. ALF'D SMITH, *Treasurer.*
WM. H. SHELMERDINE.

PHILADELPHIA, *April* 17, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of John W. Thackara one thousand seven hundred and eighty-nine $\frac{50}{100}$ dollars, in lawful money of the United States, with 6 per cent. interest, payable in gold, upon the redemption of this bond.

[SEAL.] JOHN RUSSELL, *President.*
$1,789 $\frac{50}{100}$. ALF'D SMITH, *Treasurer.*
WM. H. SHELMERDINE.

PHILADELPHIA, *December 13th*, 1871.

One day after date the Fairmount Gold and Silver Mining
346 Company promise to pay to John W. Thackara ten thousand

dollars, lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[SEAL.] JOHN RUSSELL, *President.*
ABRAM C. BROWN, *Treasurer.*

Countersigned by the secretary :
WM. H. SHELMERDINE, *Pro Tem. Secretary.*

STAMP No. 43. PHILADELPHIA, *April* 12*th*, 1869.

One year after date, or sooner, at the option of the directors, the Fairmount Gold and Silver Mining Company promise to pay to the order Swain Thackara one hundred dollars, in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[SEAL.] CHAS. H. BROWN, *President.*
ABRAM C. BROWN, *Treasurer.*

Countersigned by the secretary :
T. J. CLINGER, *Secretary.*

Endorsed, to wit: Berlin, N. J., January 22, 1873. I do hereby transfer all my right and and title to the written bond or note to J. W. Thackara. Swain Thackara, seal.

STAMP No. 44. PHILADELPHIA, *May* 17*th*, 1869.

One year after date, or sooner, at the option of the directors, the Fairmount Gold and Silver Mining Company promise to pay to the order of John P. Harker twenty dollars, in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[SEAL] CHAS. H. BROWN, *President.*
ABRAM C. BROWN, *Treasurer.*

Countersigned by the secretary :
T. J. CLINGER, *Secretary.*

347 Endorsed, to wit: Berlin, N. J., May 31st, 1869. I do hereby transfer all my right, title, and interest to the within bond or note to Swain Thackara for his own use and benefit. John P. Harker. Berlin, N. J., January 22d, 1873. I do hereby transfer all my right, title, and interest to the within bond or note to J. W. Thackara.

STAMP No. 2. PHILADELPHA, *August* 5*th*, 1868.

One year after date, or sooner, at the option of the directors, the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown two hundred and fifty (250) dollars, in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[SEAL.] CHAS. H. BROWN, *President.*
ABRAM C. BROWN, *Treasurer.*

Countersigned by the secretary :
T. J. CLINGER, *Secretary.*

Endorsed, to wit: Pay to the order of J. W. Thackara. Abram C. Brown.

348 STAMP NO. 32. PHILADELPHIA, *August 5th*, 1868.

One year after date, or sooner, at the option of the directors, the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown three hundred and thirty-three $\frac{32}{100}$ dollars, in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[SEAL.] CHAS. H. BROWN, *President*.
ABRAM C. BROWN, *Treasurer*.

Countersigned by the secretary:
T. J. CLINGER, *Secretary*.

Endorsed, to wit: Pay to the order of J. W. Thackara. Abram C. Brown.

STAMP NO. 48. PHILADELPHIA, *July 6th*, 1869.

One year after date, or sooner, at the option of the directors, the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown one hundred and eighty-three (183$\frac{33}{100}$) dollars, in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[SEAL.] CHAS. H. BROWN, *President*.
ABRAM C. BROWN, *Treasurer*.

Countersigned by the secretary:
T. J. CLINGER, *Secretary*.

Endorsed: Pay to the order of J. W. Thackara. Abram C. Brown.

STAMP NO. 58. PHILADELPHIA, *Oct. 9th*, 1869.

One year after date, or sooner, at the option of the directors, the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown six hundred and eighty (680) dollars, in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

349 [SEAL.] CHAS. H. BROWN, *President*.
ABRAM C. BROWN, *Treasurer*.

Countersigned by the secretary:
T. J. CLINGER, *Secretary*.

Endorsed: Pay to the order of J. W. Thackara. Abram C. Brown.

Stamp No. 76. PHILADELPHIA, *M'ch* 31, 1870.

One year after date, or sooner, at the option of the directors, the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown three hundred and fifty $\frac{69}{100}$ dollars in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[SEAL.] CHAS. H. BROWN, *President.*

Countersigned by the secretary:

T. J. CLINGER, *Secretary.*

Endorsed: Pay to the order of J. W. Thackara. Abram C. Brown.

Stamp No. 102. Philadelphia, *M'ch* 26, 1872.

One day after date, the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown fifteen dollars in lawful money of the United States, with 6 per cent. interest, upon the presentation of this certificate, and which said certificate is issued to the holder thereof by and under the provisions of a resolution of the board of directors, of date December 30th, 1871.

[SEAL.] JOHN RUSSELL, *President.*
ALF'D SMITH, *Treasurer.*

WM. H. SHELMERDINE, *Secretary.*

Endorsed: Pay to the order of J. W. Thackara. A. C. Brown.

350 Stamp No. 114. Philadelphia, *April 30th*, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown sixty dollars in lawful money of the United States, with 6 per cent. interest, upon the presentation of this certificate, and which said certificate is issued to the holder by and under the provisions of a resolution of the board of directors, of date December 30th, 1871.

[SEAL.] JOHN RUSSELL, *President.*
ALF'D SMITH, *Treasurer.*

WM. H. SHELMERDINE, *Secretary.*

Endorsed: Pay to the order of J. W. Thackara. Abram C. Brown.

Stamp No. 121. Philadelphia, *May 24th*, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown twenty-five dollars in lawful money of the United States, with 6 per cent. interest, upon the presentation of this certificate, and which said certificate is issued to the holder thereof, by and under the provisions of a resolution of the board of directors, of date December 30th, 1871.

JOHN RUSSELL, *President.*
ALFR'D SMITH, *Treasurer.*

Endorsed: Pay to the order of J. W. Thackara. Abram C. Brown.

Stamp No. 128. Philadelphia, *July 2d*, 1872.

One day after date the Fairmount Gold and Silver Mining
351 Company promise to pay to the order of Abram C. Brown

one hundred and ninety dollars in lawful money of the United States, with 6 per cent. interest, upon the presentation of this certificate, and which said certificate is issued to the holder thereof, by and under the provisions of a resolution of the board of directors, of date June 19th, 1872.

[SEAL.] JOHN RUSSELL, *President.*
$190. WM. H. SHELMERDINE, *Treasurer.*
ALF'D SMITH, *Secretary.*

Endorsed: Pay to the order of J. W. Thackara. Abram C. Brown.

No. 129. PHILADA., *August 15th*, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown five hundred dollars in lawful money of the United States, with 6 per cent. interest, upon the presentation of this certificate, and which said certificate is issued to the holder thereof, by and under the provisions of a resolution of the board of directors of date December 30th, 1871.

[SEAL.] JOHN RUSSELL, *President.*
$500.00. WM. H. SHELMERDINE, *Treasurer.*
ALFRED SMITH, *Secretary.*

Endorsed: Pay to the order of J. W. Thackara. Abram C. Brown.

352 No. 131. PHILADELPHIA, *August 28th*, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown two hundred and fifty dollars in lawful money of the United States, with 6 per cent. interest, upon the presentation of this certificate, and which said certificate is issued to the holder thereof, and under the provisions of a resolution of the board of directors of date June 19th, 1872.

[SEAL.] JOHN RUSSELL, *President.*
$250.00. WM. H. SHELMERDINE, *Treasurer.*

Endorsed: Pay to the order of J. W. Thackara. Abram C. Brown.

Articles of agreement made and concluded the seventeenth day of April, A. D. 1872, between the Fairmount Gold and Silver Mining Company, a corporation created under and by the authority of an act of assembly of the State of California, approved the first day of May, A. D. 1866, party of the first part, and John W. Thackara, of the city of Philadelphia, and State of Pennsylvania, party of the second part. Witnesseth, whereas the party of the second part, is owner of certain mining properties located in Clear Creek county, in the Territory of Colorado, and which said mining

properties are as follows, to wit: Hanson lode, eight hun-
353 dred feet; Steets lode, eight hundred feet; Thackara lode,
eight hundred feet; Moorhead lode, eight hundred feet; Fairmount lode, fifteen hundred feet; and Goodenough lode, fifteen hundred feet; making in the total thereof, six thousand two hundred feet. And whereas it becomes necessary for the party of the first part to employ the services of a person in the capacity of superintendent for the management of the affairs of the party of the first part, in Colorado, as aforesaid, and which more fully appears in article 12, section 6, of the by-laws of the party of the first part, and which are as follows, to wit:

Articles IV. Officers and their duties.

Section 6. Superintendents.

The superintendent of the company shall, upon the first day of every month, make out and forward a statement of the amount of money he requires for the *for the* use of the company for the month next ensuing, to the president, who shall present the same to the board of directors for approval.

He shall, on the first day of every month, make out and forward a statement in detail of all moneys received, disbursed, and expended by him for and in behalf of the company, with vouchers, to the president, who shall present the same to the board of directors for approval, and shall perform all the duties of his office as the board of directors shall from time to time direct.

354 He shall employ the services of such [—] necessary to conduct the mining business of the company in Colorado, and submit the names of such persons so employed to the president, to be presented by the president to the board of directors for approval.

Now, therefore, the party of the first part agrees, and by these presents doth agree, to employ the services of John W. Thackara, party of the second part, in the capacity of superintendent, for the period of one year from the date of these presents, for considerations and upon conditions hereinafter specified. The party of the first part agrees, and by these presents doth agree, to pay to the said John W. Thackara, party of the second part, for and in consideration of his services as superintendent, the sum of five thousand dollars as salary for one year from the date of these presents, of which said sum the party of the second part shall receive only at the rate of one hundred and fifty dollars in cash for each and every month, until that point of time is reached, when the party of the first part is in a condition to pay dividends upon the stock issued by the party of the first part, and at which issue the party of the second part shall be paid his salary in full, and thereafter in equal monthly payments.

And the said John W. Thackara, party of the second part agrees,
and by these presents doth agree, to accept the employment
355 of the party of the first part in the capacity of superintend-

ent, and to enter upon and perform the duties of superintendent as hereinbefore fully set forth, and for the considerations and upon the conditions hereinbefore also set forth at large; and, further, to faithfully perform all the duties of superintendent to the best of his skill and ability to the exclusion of his individual behoofs and interests.

And the said Fairmount Gold and Silver Mining Company, party of the first part, and the said John W. Thackara, party of the second part, agree, and by these presents doth agree, to give the one to the other three months' notice of the intention of either party to terminate this agreement, which said notice shall be given prior to the expiration of this agreement, and which said notice shall be in writing; and the said Fairmount Gold and Silver Mining Company, party of the first part, and the said John W. Thackara, party of the second part, agrees, and by these presents doth agree, that in the event of failure of notice the one to the other, as hereinbefore provided for, that then, and in that case, this agreement shall continue to have full force and effect for one year, subject to like considerations and conditions, and like requirements as to notice to be given prior to the termination thereof.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year aforesaid.

JOHN RUSSELL,
President of the Fairmount Gold and Silver Mining Company.
356 JOHN W. THACKARA. [L. S.]

Signed, sealed, and delivered in presence of—
ALF'D SMITH.
C. H. DAVIS.

And thereupon a writ of attachment is sued out of and under the seal of said court, in words and figures following, to wit:

The people of the Territory of Colorado to the sheriff of Clear Creek county, Greeting:

Whereas John W. Thackara hath complained on oath to J. R. Cleaveland, clerk of the district court of the second judicial district in and for the county of Clear Creek, that the Fairmount Gold and Silver Mining Company [is] justly indebted to the said John W. Thackara to the amount of twenty-one thousand nine hundred and two dollars and six cents, and oath having also been made that the said Fairmount Gold and Silver Mining Company is a foreign corporation; and the said John W. Thackara having given bond and security according to the directions of the act in such case made and provided—

We therefore command you that you attach so much of the estate, real and personal, of the said Fairmount Gold and Silver Mining Company to be found in your county as shall be of value
357 sufficient to satisfy the said debt and costs according to the

complaint; and such estate so attached in your hands to secure, so as to provide that the same may be liable to further proceedings thereupon according to law, at a court to be holden at Georgetown, for the said county of Clear Creek, upon the first Tuesday of April next, so as to compel the said Fairmount Gold and Silver Mining Company to appear and answer the complaint of the said John W. Thackara.

Witness J. R. Cleaveland, clerk of the said court, and the seal thereof, this 22d day of March, A. D. 1873.

[L. S.] J. R. CLEAVELAND, *Clerk.*
By ED. C. PARMELEE, *Deputy.*

Afterwards and upon the 25th day of March, A. D. 1873, the said writ of attachment was returned into said clerk's office, with an endorsement thereon, in words and figures following, to wit:

TERRITORY OF COLORADO,
Clear Creek County, } *ss:*

I have duly levied the within writ upon the following-described property, to wit, 1,500 ft. on the Goodenough lode, 800 ft. on the Moorehouse lode, 800 ft. on the Steele lode, 800 ft. on
358 the Hanson lode, and the west 1,500 ft on the Fairmount lode; also the Fairmount Gold and Silver Mining Company's mill and furnace buildings, mill site, tunnel site, and all the improvements situated thereon; also the machinery in said mill, consisting of one forty-horse engine and boiler, 1 jaw crusher and pulverizer, 12 pulleys and shafting and belting, 4 iron tanks, 1 heating stove and pipe, gas pipe, 17 beveled gears, 3 shafts and coupling, 3 couplings, 1 monkey wrench, 2 S wrenches, 1 socket wrench, 2 planes, 1 drawing knife, 2 wooden tanks, 1 Clark's patent blower, 1 coil hage, 9 furnace rods, 1 pr. gas-pipe tongs, 8 tiles and fire brick, 140 ft. 12-in. iron pipe, all of said property situate in Spanish Bar Mining District, Clear Creek county, Colorado Territory, and taken as the property of the Fairmount Gold and Silver Mining Company. I have also duly served this writ by reading and delivering a true copy of the same to Wm. B. Morton, a stockholder of the Fairmount Gold and Silver Mining Company. No president, secretary, agent, or other officer of said Co. found in my county, this 22d day of March, 1873.

P. H. SKEALAM, *Sheriff.*
By P. S. BAILY, *Deputy.*

Afterwards, to wit, on the 3d day of April, A. D. 1873, the
359 same being one of the regular days of the said April term of said court, proceedings were had as follows, to wit:

JOHN W. THACKARA
vs.
FAIRMOUNT G. & S. CO. } 907. Attachment.

Now comes said plaintiff, by G. B. Reed, Esq., his attorney, and on his motion, said defendant is ruled to plead by the incoming of court, on Monday morning next, the 7th inst.

Afterwards, and upon the 7th day of April, A. D. 1873, the said defendant, by its attorneys, files its affidavit of merits in said cause, in words and figures following, to wit:

TERRITORY OF COLORADO, } *ss:*
Clear Creek County, }

In the District Court of the April Term, A. D. 1873.

JOHN W. THACKARA
vs.
THE FAIRMOUNT GOLD & SILVER MINING COMPANY.

Frank A. Pope, being first duly sworn, makes oath and says that he is the agent and attorney of the above-named defendant, the Fairmount Gold and Silver Mining Company; that said de-
360 fendant has a good and meritorious defense to said above-entitled action; that said defense is that the said defendant is not indebted to the said plaintiff; that the consideration for the writings obligatory mentioned in said plaintiff's declaration has entirely failed; that the writings obligatory mentioned in said declaration, as having been assigned to said plaintiff, were assigned to said plaintiff after the same had become due; that the said plaintiff, as superintendent of the affairs and business of said defendant in Colorado, received from the defendant a large sum of money, amounting to the sum of $15,000, to be used in and about the business of said defendant in Colorado, but that the said plaintiff failed to so use, and expended said money, but appropriated the same to his own use; that he has received other moneys for the use of the defendant, but has not made return of the same, but appropriated said moneys to his own use; that said defendant has paid to said plaintiff all indebtedness owing from said defendant to said plaintiff.

FRANK A. POPE.

Subscribed and sworn to before me, this 7th day of April, A. D. 1873.

J. R. CLEAVELAND, *Clerk.*
ED. C. PARMELEE, *Deputy.*

361 And upon the same day, to wit, the day and year last aforesaid, proceedings were had in said court as follows, to wit:

JOHN W. THACKARA }
vs. } 907. Attachment.
FAIRMOUNT G. AND S. CO. }

Now comes said defendant, and on its motion, the rule to plead, heretofore made in this cause, is vacated, and said defendant is ruled to plead by the incoming of court on Thursday morning next, the 10th inst.

Afterwards, and on the 8th day of April, the said defendant, by its attorney, files in said cause its affidavit of continuance, in words and figures following, to wit:

TERRITORY OF COLORADO, } ss:
Clear Creek County, }

In the District Court. To the April Term, A. D. 1873.

JOHN W. THACKARA
vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY.

Frank A. Pope, being first duly sworn, makes oath and says that he is the agent and attorney of the Fairmount Gold and
362 Silver Mining Company, the above-named defendant.

That said defendant cannot safely proceed to the trial of said above-entitled cause at the present term of this court on account of the absence of John Russell and Alfred Smith, who are material witnesses for and on behalf of the defendant.

That said witnesses, Smith and Russell, reside in the city of Philadelphia, in the State of Pennsylvania.

That said Russell is president and said Smith is the secretary of said defendant.

That said action was commenced by summons on the 22d day of March, A. D. 1873; that said summons was not served on any officer of the defendant, but on a stockholder in Colorado.

That since the issuing of the summons in this cause sufficient time has not elapsed for defendant to procure the testimony of said witnesses, Russell and Smith, and that the process of this court would have been wholly unavailing to compel the attendance of said witnesses, Russell and Smith.

That the defendant expects to prove by said witnesses, Russell and Smith, that the consideration for the various writings obligatory of said company, defendant, in the plaintiff's declaration mentioned, has wholly failed; that said writings obligatory, in said declaration mentioned as having been assigned to the plaintiff, were assigned to said plaintiff after the same had become due.

That in the early part of the year 1872 the defendant em-
363 ployed the plaintiff to take charge of its business in Colorado for a certain length of time, to wit, one year from the date of said contract; that the plaintiff contracted to take charge of the defendant's business and carry on the same for the time of one year, and that the plaintiff did not fulfill said contract, but that plaintiff abandoned the said contract without any cause or fault on the part of or consent of said defendant, to the great damage of the defendant, and that the defendant was greatly damaged and injured in its business by said abondonment on the part of plaintiff of said contract.

That said defendant during the year 1872 placed in the hands of the plaintiff, who had been employed by the defendant to take

charge of its business in Colorado, as its superintendent of its business in Colorado, a large sum of money, that is, the sum of fifteen thousand dollars, to be used about the defendant's business in Colorado; that said plaintiff promised the defendant to faithfully and carefully expend said moneys in and about the business of the defendant, and to account to the defendant for the same, and that said plaintiff has not accounted to said defendant for said sum of fifteen thousand dollars, but has appropriated to his own use a large portion of said sum of money, to wit, the sum of ten thousand dollars; that said plaintiff, John W. Thackara, has contracted debts on behalf of the company, defendant, and has re-
364 turned a statement to the amount of five hundred dollars to said defendant; that he had paid said debts out of the defendant's money in his hands when he had not in fact paid them, has been since *been* sued on the same debts which plaintiff had reported to defendant as having by him been paid out of the money of the defendant.

That the plaintiff was in charge of the defendant's business in Colorado during a portion of the years 1872 and 1873, and during that time he received a large amount of money to the use of the defendant from the sale of ore taken from the defendant's mine and from the sale of other of defendants property, but what precise amount your affiant is unable to state, and that said plaintiff has not paid over to nor accounted to said defendant for said money, or any part thereof, but did appropriate the same to his own use.

That said defendant not at any time accepted the book account of said plaintiff, in his said declaration mentioned, as being true and correct.

That said defendant is not indebted to said plaintiff in any sum, but that the plaintiff is indebted to the defendant in a large sum of money, that is, the sum of ten thousand dollars; that said defendant has, before the commencement of this suit, paid to the plaintiff all indebtedness heretofore owing by defendant to plaintiff.

365 That said defendant expects to procure the testimony of said witnesses, Smith and Russell, at the next term of this court; that said witnesses, Smith and Russell, are not absent by, nor with the consent, connivance, or collusion of the defendant; that the defendant knows of no other person or persons by whom it can prove the above stated facts; that this affidavit is made by affiant for and on account of the defendant, and that this application is not made for delay, but that justice may be done.

FRANK A. POPE.

Subscribed and sworn to before me, this 8th day of April, A. D. 1873.

J. R. CLEAVELAND, *Clerk.*
ED. C. PARMELEE, *Deputy.*

Afterwards, to wit, on the 10th day of April, A. D. 1873, it being one of the regular days of said April term of said court, proceedings were had as follows, to wit:

JOHN W. THACKARA
vs. } 907. Attachment.
FAIRMOUNT G. AND S. M. CO.

This cause come on to be heard on defendant's motion for continuance; after argument by counsel, the court, being fully advised in the premises, grants said motion upon defendant's paying
366 the costs of this term.

And upon the same day, to wit, the day and year last aforesaid, the said defendant, by its attorney, files its pleas in said cause, in words and figures following, to wit:

TERRITORY OF COLORADO, } *ss:*
Clear Creek County,

In the District Court. To the April Term, A. D. 1873.

JOHN W. THACKARA
vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY.

And the defendant, by Frank A. Pope, its attorney, comes and defends the wrong and injury, when, &c., and says, that it does not owe the said sum of money above demanded, or any part thereof, in manner and form as the plaintiff hath above thereof so complained against him, and of this the defendant puts himself upon the country, &c.

By FRANK A. POPE,
Defendant's Attorney.

And the plaintiff doth the like.

And the defendant, for a further plea in this behalf, says, *actio non*, because it says that the said writings obligatory in the first, second, third, and fourth counts of the plaintiff's declaration
367 mentioned were made and delivered to the plaintiff in consideration of plaintiff's promise to take charge of defendant's business in Colorado Territory, and *and* superintend and carry on the same for one year from the 17th day of April, 1872; and the defendant says that plaintiff did not take charge of, manage, and carry on the business of the defendant in Colorado Territory, for the time of one year, from the 17th day of April, 1872, but did voluntarily and of his own accord, and without the consent of defendant, abandon the business of the defendant in Colorado Territory.

And the defendant further avers that the promise of the said plaintiff to take charge of and superintend the defendant's business in Colorado Territory was the only consideration for and object of the said writings obligatory by the defendant, so made and assigned as aforesaid; wherefore by reas[on] of the plaintiff having failed to take charge of, manage, and carry on the business of the defendant in Colorado Territory for one year from the 17th day of April, the consideration of the said contract and the said writings obligatory mentioned has entirely failed, and this the defendant is ready to verify; wherefore he prays judgment, &c.

By FRANK A. POPE,
Def't's Attorney.

368 And for further plea in this behalf defendant says *actio non*, because it says that on the first day of May, 1872, it placed in the hands of delivered to the said plaintiff the sum of fifteen thousand dollars, to be used and expended in and about the business of the defendant in Colorado Territory, and the plaintiff was then superintendent of defendant's business in Colorado Territory, and the plaintiff then promised the defendant to expend said sum of fifteen thousand dollars in and about the business of the defendant in Colorado Territory, but defendant says that the plaintiff did not expend said fifteen thousand dollars in and about the business of the defendant in Colorado Territory, but appropriated the same to his own use, and has not returned said money to said defendant, nor paid back nor accounted for said sum of money to defendant, but still retains said money in his own possession, and this the defendant is ready to verify: wherefore it prays judgment, &c.

By FRANK A. POPE,
Def't's Attorney.

And for further plea in this behalf defendant says *actio non*, because it says that during a portion of the year 1872 plaintiff was superintendent of defendant's business in Colorado Territory, and sold during said year 1872 a large amount of defendant's property and received the money therefrom, to wit, the sum of five 369 thousand dollars; that said sum of money was received for defendant's use by plaintiff, but that he, the plaintiff, has not accounted to defendant for said money, nor paid the same to defendant, but has appropriated the same to his own use; and this the defendant is ready to verify; wherefore it prays judgment, &c.

By FRANK A. POPE,
Defendant's Attorney.

Afterwards and upon the 21st day of April, A. D. 1873, the same being one of the regular days of the said April term of said court, proceedings were had, as follows, to wit:

JOHN W. THACKARA
vs.
FAIRMOUNT G. & S. Co. } 907. Attachment.

Now comes said defendant, by F. A. Pope, Esq., its attorney, and on his motion, leave is granted to file amended pleas in this action by the first day of June next.

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Afterwards, to wit, on the 31st day of May, A. D. 1873, the said defendant, by its attorney, filed in said cause additional pleas, in words and figures following, to wit:

370 TERRITORY OF COLORADO, *Clear Creek County*, } *ss:*

In the District Court. To the July Special Term, A. D. 1873.

JOHN W. THACKARA
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY.

And the defendant, by Frank A. Pope, its attorney, comes and defends the wrong and injury when, &c., and for a further plea in this behalf says, *actio non*, because it says that the two certificates of indebtedness mentioned in plaintiff's declaration, (therein called erroneously bonds,) to wit, one for ten thousand dollars, and the other for seventeen hundred eighty-nine dollars and fifty cents, were issued by defendant and given to plaintiff in final payment and settlement of his salary, except one hundred dollars per month, which was paid in cash to him, as general agent of defendant, which said salary, except said one hundred dollars per month, was not to become due and payable until the profits accruing from the mines and works of the defendant were sufficient to pay the same, and the said plaintiff took and accepted the said certificates of indebtedness, with the distinct understanding and agreement that the amount of said certificates of indebtedness was not to be paid him
371 until *until* defendant had realized sufficient profits from their mines and works so to do. And the defendant further avers and says that the profits accruing from its mines and works have not been sufficient at any time to pay said certificates of indebteness, or any part thereof, and this the defendant is ready to verify; wherefore it prays judgment, &c.

FRANK A. POPE, *Defendants' Attorney.*

And for further plea in this behalf defendant says *actio non*, because it says that the bonds mentioned in plaintiff's declaration, to wit, bonds numbered, respectively, Nos. 116, 102, 104, 121, 128, 129, and 131, were issued by the said defendant to the holders of said bonds, with the distinct understanding between said holders and defendant that said bonds were not to be paid by defendant until the profits accruing from the mines and works of the defendant were sufficient to pay the same; and that said holders of said bonds so took and accepted the same, of all of which the plaintiff then and there had notice.

And defendant further avers and says that the profits of its mines and works have not at any time been sufficient to pay the amount of said bonds, or any part thereof, and this the defendant is ready to verify. Wherefore it prays judgment, &c.

FRANK A. POPE, *Defendant's Attorney.*

372 And for further plea in this behalf defendant says *actio non*, because it says that the bonds mentioned in plaintiff's declaration numbered, respectively, 41, (erroneously mentioned in plaintiff's declaration as No. 43,) 2, 32, 48, 58, and 76, were issued by defendant to the holders thereof; and after said bonds were accepted from defendant in payment of certain loans by said holders of said bonds to defendant, the defendant created a certain mortgage on all its property in Clear Creek county, Colorado Territory, in favor of Thomas Hare and Jonathan H. Pugh, of the city and county of Philadelphia, and State of Pennsylvania, in trust for the payment of said bonds, and the holders of said bonds agreed to and with defendant to accept said mortgage in trust as aforesaid as collateral security for the payment of said bonds, of all of which the plaintiff then and there had notice; and the defendant further avers and says that the property covered by said mortgage, and on which said mortgage is a lien, (being recorded in Clear Creek county, Colorado Territory, on the thirtieth day of August, A. D. 1870,) is of value ample and sufficient to pay said bonds, and that plaintiff ought not to recover judgment against defendant in this action for the amount of said bonds, or any part thereof, until he shall have first exhausted the said collateral security for the
373 payment of said bonds, and this the defendant is ready to verify. Wherefore it prays judgment, &c.

FRANK A. POPE,
Defendant's Attorney.

And for a further plea in this behalf defendant says *actio non*, because it says that all and every the bonds and certificates of indebtedness mentioned and particularly described in plaintiff's declaration are not yet due and payable, for the reason that at the time said bonds and certificates of indebtedness were issued by defendant and delivered to the said holders thereof it was expressly understood and agreed by and between the defendant and the holders of said bonds and certificates of indebtedness, were not to be paid by the defendant until such time as the profits expected to be realized from the mines and works of defendant were sufficient in amount to pay the same, of all of which the plaintiff then and there had notice; and the defendant further avers and says that the consideration upon which said bonds and certificates were issued and given to the said holders was as particularly set forth above, and that it was only upon the promise of said holders not to demand payment of said bonds and certificates of indebtedness until defendant should realize from its mines and works sufficient money to
374 pay the same, that said bonds and certificates of indebtedness issued by defendant, of all of which the plaintiff then and there had notice, and given to the said holders thereof; and the defendant further avers and says, that sufficient profits have not been realized from said mines and works of said defendant, and the working of said mines and works, to pay said certificates of indebted-

ness, or any part thereof, and this the defendant is ready to verify. Wherefore it prays judgment, &c.

By FRANK A. POPE.

Afterwards, to wit, on the 21st day of June, A. D. 1873, the said plaintiff filed an account in said cause, in words and figures following, to wit:

The Fairmount Gold and Silver Mining Company to John W. Thackara, Dr.

1872.			
Sept.	4.	To cash, fare to Central	$1 50
		W. H. Toppan & Co., hardware	25 49
		“ “	1 20
		Ladd & Schuyler, “	8 30
		T. T. Stokes, smithing	21 20
	5.	L. M. Freas	25 69
		Boarding and lodging, (Central)	3 75
		Fare to Idaho	1 50
	7.	E. L. Stafford, (labor)	18 00
		Samuel Moses, “	16 50
		George Rice, labor	9 00
		William S. Rice, labor	15 75
		Joseph A. Rice “	16 50
		H. A. Racine, mason	11 25
		M. P. Powell, carpenter	27 00
		John Anderson “	22 50
	11.	Felteau & Co, lumber	171 75
	12.	A. G. Langford, machinery	88 65
		Ladd & Schuyler, tank	358 23
		E. L. Stafford, horses	6 00
	14.	D. Faivre	3 10
		E. L. Stafford, machinist	18 00
		Samuel Moses, labor	18 00
		H. A. Racine, mason	15 00
		Joseph A. Rice, labor	17 25
		William S. Rice, “	18 00
		M. P. Powel, carpenter	27 00
		John Anderson, “	22 50
		William H. Cheatly, miner	18 75
		William Swancoat, “	12 25
		George Rice, labor	9 00
		J. W. Thackara, Jr., labor	3 00
		J. W. Thackara, salary	150 00
	18.	G. W. Wood, smithing	6 50
	19.	Toll to and from Georgetown	40 00
	21.	Hotel bill	3 00

375

1872.		
Sept. 21.	To Telegram, Theodore H. Lowe	$0 35
	Horse feed at Georgetown	2 00
376		
	E. L. Stafford, labor	21 00
		$1,214 86
		1,214 86
21.	To cash, H. A. Racine, mason	9 00
	Sam'l Moses, labor	18 00
	George Rice, “	9 00
	Joseph A. Rice, labor	9 00
	William S. Rice, “	11 25
	W. P. Powell, carpenter	24 75
	John Anderson, “	27 00
	William W. Cheatly, miner	30 00
	J. W. Thackara, Jr., mine	21 00
	John Atkins, team	28 00
	William Swancoat, miner	14 00
23.	George W. Wells, lode	16 00
	“ mill site	16 00
24.	D. Faivre, powder, fuse, &c.	15 35
	Peter Theebold, handles	1 70
	E. L. Stafford, horse	3 00
27.	D. P. Wilmot, lumber	50 00
28.	E. L. Stafford, machinist	18 00
	Samuel Moses, labor	18 00
	George Rice, “	18 00
	William S. Rice, “	10 50
	W. P. Powell, carpenter	24 75
	John Anderson, “	18 00
	Wm. H. Cheatly, miner	30 00
	William Swancoat, “	21 00
377		
	J. W. Thackara, Jr., and horse	17 50
	P. H. Morling, mason	16 50
	H. A. Racine “	9 75
	John Morris, miner	13 00
	Thomas Jenkins, miner	13 00
	Joseph A. Rice, labor	6 00
30.	John Akins, team	24 00
Oct. 5.	E. L. Stafford, machinist	18 00
	George Rice, labor	18 00
	M. P. Powell, carpenter	27 00
	John Anderson, “	25 87
	William H. Cheatly, miner	30 00
	William Swancoat	21 00

1872.				
Oct.	5.	To cash, J. W. Thackara, Jr., miner	$10	00
		H. A. Racine, mason	17	25
		P. H. Norling “	17	25
			$1,860	28
			$1,860	28
		John Morris, miner	9	75
		Thomas Jenkins, miner	9	75
		Joseph A. Rice, labor	14	25
		John Akins, team	16	00
		Samuel Moses, labor	14	25
	12.	E. L. Stafford, machinist	18	00
		“ horse	3	00
		George Rice, labor	6	00
		Joseph A. Rice, labor	17	25
		M. P. Powell, carpenter	27	00
378				
		John Anderson, carpenter	27	00
		William H. Cheatly, miner	30	00
		William Swancoat, “	21	00
		J. W. Thackara, “	7	50
		H. A. Racine, mason	16	50
		Samuel Moses, labor	18	00
		John Akins, team	22	00
		P. H. Norling, mason	9	00
	14.	1 quire paper		25
	17.	J. W. Thackara, salary	150	00
	19.	L. J. Feddeman, coal	43	65
		E. L. Stafford, labor	18	00
		H. A. Racine, “	18	00
		P. H. Norling, “	18	00
		J. W. Thackara, mine	15	00
		M. P. Powell, carpenter	18	00
		John Anderson, “	27	00
		Samuel Moses, cut wood	18	00
		William S. Rice, “	17	25
		Joseph A. Rice, labor	15	00
		William H. Cheatly, miner	30	00
		William Swancoat, “	21	00
		Griffith G. Jones, “	21	00
		John Akins, team	37	60
		George Rice, labor	15	00
	25.	Jno. Hallam, casting	25	03
		Ladd & Schuyler, stock	46	00
	26.	E. L. Stafford, machinist	18	00
379				
		H. A. Recine, mason	18	00

1872.		
Oct. 26.	To cash, P. H. Norling, mason	$18 00
	John Anderson, carpenter	27 00
		$2,781 31
		$2,781 31
	Samuel Moses, labor	11 25
	George Rice, labor.	3 75
	Joseph A. Rice, labor	2 25
	J. W. Thackara, Jr., mine	12 25
	William W. Cheatly, mine	30 00
	William Swancoat, mine	21 00
	Griffith G. Jones, mine	21 00
	George Martien, mine	17 50
	John Akin, team	13 60
	Charles A. Rendel, labor	6 00
28.	Horse hire	3 00
30.	J. A. Filteau & Co., lumber	50 00
	Coach to Central and back	3 00
	Dinner at Central	50
Nov. 2.	E. L. Stafford, machinist	18 00
	H. A. Racine, labor	14 25
	P. H. Norling, labor	20 25
	Charles A. Rendal, wood	18 75
	Samuel Mason, wood	18 00
	John Anderson, carpenter	24 75
	William W. Cheatly, mine	30 00
	William Swancoat, mine	21 00
	Griffith G. Jones, mine.	21 00

380

	George Martin, miner	19 25
	J. W. Thackara, Jr., and horse	8 50
	Stephen Welch, (posting)	16 50
	E. Easley, carting	6 00
	Stamps	50
9.	E. L. Stafford, labor	18 00
	P. H. Norling, labor	16 50
	Charles O. Rendel, labor	18 00
	John Anderson, carpenter	27 00
	Stephen Welch, labor	18 00
	J. W. Thackara, Jr., and horse	11 00
	William H. Chestly, miner	30 00
	William Swancoat, miner	21 00
	Griffith G. Jones, labor	21 00
Oct. 9.	Samuel Moses, labor	14 25
	Thomas Hooper, team	17 00
		$3,524 91

1872.				
			$3,524	91
Nov.	9.	To cash, H. A. Recine, labor	12	00
	11.	Collection of draft, $750	3	75
	12.	Horse to Black Hawk	3	00
	13.	Toll, Idaho to Central	1	00
	16.	E. L. Stafford	21	00
		H. A. Recine	21	00
		P. H. Norling	19	50
		Charles A. Rendel	17	50
		Stephen Welch	21	00
		Samuel Moses	4	50
		John Anderson	27	00
		J. W. Thackara, Jr.	5	00
		Thomas Hooper	31	50
	18.	J. W. Thackara	150	00
		Horse to Black Hawk	3	00
	19.	“ “	3	00
	23.	E. L. Stafford	18	00
		H. A. Recine	9	00
		P. H. Norling	13	50
		Chas. H. Rendel	16	50
		Stephen Welch	17	25
		J. W. Thackara, Jr.	3	00
		Thomas Hooper	28	12
		John Anderson	20	25
381				
	25.	Thomas Mullen, lime	12	00
	27.	Fare to Denver	6	50
		Dinner at Golden		50
	28.	Sylvester Richardson, brick	23	00
		Q't rosin		50
	29.	Hotel bill, Denver	5	25
		Fare to Idaho	6	50
		Dinner at Central		50
		Horse to Black Hawk	3	00
	30.	George Hooper, brick	36	00
		E. L. Stafford	18	00
		P. H. Norling	16	50
		Chas. A. Rendel	9	00
		Stephen Welch	18	00
			$4,149	53
			$4,149	53
		John Anderson	27	00
		Thomas Hooper	31	50
		J. E. Iszard	30	00
		William Benson	18	50

1872.			
Nov. 30.	To cash, J. W. Thackara, Jr.	$4	00
	Envelopes and stamps	1	50
Dec. 2.	D. Faivre		80
	1 brass water spicket	1	00
4.	Henry Nutt, freight	9	10
	Thomas Demek, freight	24	00
	J. L. More, "	16	50
	Horse	3	00
382			
6.	George A. Patten	17	00
7.	Horse to Central	3	00
	Ladd & Schuyler	1	80
	A. G. Langford	1	00
	Roworth & Co	5	10
	E. L. Stafford	18	00
	Stephen Welch	18	00
	John Anderson	24	75
	John E. Iszard	30	00
	William Benson	15	00
	J. W. Thackara	4	00
	P. H. Norling	15	00
	Chas. A. Rendel	15	00
	Henry E. Newcomb	42	00
	H. A. Recine	11	25
12.	Horse to Black Hawk	3	00
	Roworth & Co		80
	John Tomlinson	5	00
13.	Idaho to Central, toll	1	00
14.	W. H. Hooper & Co	77	05
	E. L. Stafford	18	00
	Stephen Welch	18	00
	John Anderson	20	25
	J. W. Thackara, Jr	6	00
	John E. Iszard	30	00
	William Benson	15	00
	P. H. Norling	18	00
	Charles A. Rendel	17	25
383			
	H. A. Recine	18	00
		$4,794	18
		$4,794	18
	Thomas Hooper	27	75
	Owen O. Jones	5	25
	Thomas Jenkins	3	50
17.	J. W. Thackara	150	00
18.	Stephen Welch	7	50

1872.			
Dec. 18.	To cash,	Charles A. Rendel	$3 75
		Thomas Hooper	13 12
19.		Peter Theobold	26 11
		D. Faivre	13 30
		Welding steel bar	50
		John E. Iszard	28 32
		John E. Iszard	17 50
21.		Martin Hilander	28 75
		E. L. Stafford	18 00
		John Anderson	5 50
		P. H. Norling	7 50
		H. A. Recine	6 00
26.		William Twann	400 00
1873.			
Jan. 4.		H. A. Recine	10 50
		P. H. Norling	5 25
		J. W. Thackara, Jr.	3 00
11.		P. H. Norling	1 50
		H. A. Recine	1 50
Feb'y 1.		William Renson	2 25
384			
8.		William Renson	3 00
15.		William Renson	3 00
22.		John Subers	3 00
			$5,579 53

Afterwards, to wit, on the 10th day of July, A. D. 1873, depositions were filed in said cause in words and figures following, to wit:

Deposition of Jacob S. Fish, Thomas Hare, William H. Shelmerdine, Jonathan H. Pugh, Alfred Smith, and William Quanu, of the city and county of Philadelphia and State of Pennsylvania; and John Russell, of the county of Burlington and State of New Jersey, witnesses of lawful age, produced, sworn, and affirmed and examined upon their corporal oaths and affirmation on the 30th day of June and the first day of July, A. D. 1873, at the office at the Fairmount Gold and Silver Mining Company, in the city and county of Philadelphia and State aforesaid, by me, John C. Addis, a commissioner duly appointed by a *dedimus potestatum*, issuing out of the clerk's office of the district court of Clear Creek county, in the Territory of Colorado, bearing *teste* in the name of J. R. Cleveland, Esq., clerk of the said district court, and the seal of the said court affixed thereto, and to me directed as such commissioner for 385 the examination of the said Jacob S. Fish, Thomas Hare, Jonathan H. Pugh, William H. Shelmerdine, John Russell, Alfred Smith, and William Quanu, witnesses in a certain suit and matter in controversy now pending and undetermined in the said district court, wherein John W. Thackara is plaintiff and the Fairmount Gold and Silver Mining Company is defendant, on behalf of the said The Fairmount Gold and Silver Mining Company, as well upon the cross-interrogatories of the plaintiff as upon the interrogatories of the defendant, which were attached to or included with the said commission, and upon none others. The said Jacob S. Fish, Thomas Hare, William H. Shelmerdine, Jonathan H. Pugh, John Russell, Alfred Smith, and William Quanu being first duly sworn, and affirming by me as witnesses in the said cause previous to the commencement of their examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and defendant as far as they should be interrogated, testified, and deposed as follows:

Jacob S. Fish, a witness produced on behalf of the defendant, being duly affirmed according to law, deposes and says:

Interrogatory first. What is your name, age, occupation, and place of business?

Answer. My name, Jacob S. Fish; my age, 65 years; I am
386 not in business; reside in the city and county of Philadelphia.

Interrogatory second. Do you know the parties, plaintiff and defendant in this cause, or either, and which of them, and how long have you known them respectively?

Answer. I do know the parties plaintiff and defendant. I have known the plaintiff for upwards of six years, and have been a stockholder of defendant for six years and upwards.

Interrogatory third. Do you know Swain Thackara; if yea, please state how long you have known him, and what position, if any, do you know of his having occupied under or in the employ of the defendant?

Answer. I do know Swain Thackara, and have known him for six years and upwards. He was in the employ of defendant as general agent.

Interrogatory fourth. Was there, or was there not any contract between Swain Thackara and defendant with reference to the employment of Swain Thackara about the witness of the defendant in Colorado; and, if yea, state the time when said contract was made the nature thereof, and the time of its expiration? Please state the same fully and particularly, and in detail.

Answer. There was a contract between defendant and Swain Thackara with reference to his employment. The contract was made in August, 1867. The nature of the contract was that Swain
Thackara was to have five thousand dollars ($5,000) as salary
387 as general agent of the defendant, one hundred dollars of
which was to be paid in cash monthly, and the balance to be paid when the profits of the company would guarantee the payment. This contract expired in February, 1869.

Interrogatory fifth. State how, and under what circumstances bonds of defendant, numbered, respectively, 41, 44, 2, 32, 48, 58, and 76, were issued, and whether or not said bonds were received by mortgage or other security? State the same fully and particularly.

Answer. These bonds were issued by the company in payment of money borrowed by the company to develop its resources. The money was borrowed of the stockholders subsequent to the issue of the bonds, the company, to further secure their payment, executed a mortgage to Mr. Jonathan H. Pugh and Thomas Hare, for seven thousand dollars, as trustees; this mortgage covered all the company's property.

Interrogatory sixth. State how and under what circumstances and conditions, if any, if you know, bonds of defendant numbered, respectively, 116, 102, 114, 121, 128, 129, and 131, were issued; state the same fully and in detail.

Answer. The company wanted to raise a certain sum of money, and the stockholders [—] that amount under a contract between them and the company, that the company would issue to them fifty per cent. of the amount the[y] subscribed, which was done, and the
holders thereof were to be paid out of the first profits of the
388 company. These bonds were so accepted by the holders.
The bonds mentioned in this interrogatory are part of these bonds.

Interrogatory seventh. State how and under what circumstances contracts and conditions, if you know, the certificates of indebtedness of defendant numbered 108 and 88, were issued? State same fully and in detail.

Answer. John W. Thackara, the plaintiff, received those certificates for the back salary in order to close up his accounts; one of them was given in December, 1871, and the other in April 1872; they were given to, and received by, him with the understanding and agreement that they were not to be paid or become due until the profits of the company guaranteed their payment. At both of these times I was a director of the company, and saw these certificates handed over and accepted by plaintiff, with the understanding that they were not to be paid until the profits of the company guaranteed their payment.

Interrogatory eighth. State if you know of any contract being made between plaintiff and defendant prior to April 1872; and, if yea, state the time, duration, and condition thereof. State the same fully and in detail.

Answer. In February, 1869, Swain Thackara resigned his position as general agent, and John W. Thackara was elected in his place under the same conditions that Swain Thackara, his brother,
had held and accepted the position; this was done at a meet-
389 ing of the board of directors, at which Swain Thackara, John
W. Thackara, other directors and myself were present at that time, Swain Thackara handed over to John W. Thackara the books and papers, and shortly afterwards John left for Colorado.

Interrogatory ninth. State what, if any, contract or agreement was made between plaintiff and defendant in April, 1872, or thereabouts; state the terms thereof fully and in detail.

Answer. I have no personal knowledge of that contract.

Interrogatory tenth. State what, if any, if you know, have been the profits of defendant since its organization.

Answer. Since its organization the defendant has realized no profits whatever.

Interrogatory eleventh. State whether or not plaintiff left Colorado and went to Philadelphia between April, 1872, and April, 1873; if yea, state the time particularly, and your means of knowledge.

Answer. I do not know when plaintiff left Colorado, but I saw him in Philadelphia the day after Christmas, 1872, and repeatedly afterwards; I think he was here about two months.

Lastly. Do you know of any other matter or thing touching the matters in controversy in this cause that may tend to the advantage of the plaintiff or defendant, in addition to what you have already stated; if yea, state the same fully and at large, as if you had been particularly interrogated in reference thereto.

390 Answer. Nothing further than already stated that I know of

Cross-interrogatories:

Cross-interrogatory first. If, in answer to fifth direct interrogatory, you say that bonds numbered, respectively, 41, 44, 2, 32, 48, 58, and 76 were secured by mortgage, state how you know the said bonds were secured by mortgage, and where the said mortgage is of record and where it can be found, and if in answer to same interrogatory you state that said bonds were secured by other security, state how you do know, and whether evidenced by writing, and where the writing can be found.

Answer. I know the bonds were secured by mortgage, and was present at a meeting of the stockholders of defendant when it was ordered that the mortgage should be made.

Cross-interrogatory second. If, in answer to eighth direct interrogatory you state that there was a contract entered into between plaintiff and defendant prior to April, 1872, state how you know such contract was made, and whether the same was written or verbal; who were the parties to the same; when and where made; and if in writing, attach a copy thereof hereto.

Answer. I know that there was a contract made between plaintiff and defendant prior to April, 1872, because I was present when it was made; the contract was a verbal one; the parties to
391 the same were plaintiff and defendant; it was made in February, 1869, at the house of Captain Nelson, Ogden street, above Eleventh, in the city of Philadelphia, at which place the meeting of board of directors was being held.

Cross-interrogatory third. If, in answer to ninth direct interrogatory, you say a contract or agreement was entered into between plaintiff and defendant in April, 1872, state how you know such contract was made, by whom it was made, whether in writing or verbal, when, if ever, such contract was abrogated and annulled, by whom it was done, and whether the same was done in the manner prescribed and set forth in such contract or agreement.

Answer. Of my own knowledge, I do not know.

J. S. FISH.

Affirmed and subscribed before me, this 30th day of June, 1873.

J. C. ADDIS, *Commissioner.*

THOMAS HARE, a witness produced on behalf of the defendant, being duly sworn according to law, deposes and says:

Interrogatory first. What is your name, age, occupation, and place of residence?

Answer. My name is Thomas Hare; my age, 56; occupation, tobacco merchant; and my residence, in the city and county of Philadelphia.

392 Interrogatory second. Do you know the parties plaintiff and defendant in this cause, or either, and which of them, and how long have you known them respectively?

Answer. I do know both plaintiff and defendant, and have known both since my connection with the company—about 1867.

Interrogatory third. Do you know Swain Thackara; if yea, please state how long you have known him, and what position, if any, do you know of his having occupied under or in the employ of the defendant?

Answer. I do know him, and have known him for the past six (6) years. He held the position of general agent under the defendant.

Interrogatory fourth. Was there or not any contract between Swain Thackara and defendant with reference to the employment of said Swain Thackara about the business of defendant in Colorado; and, if yea, state the time when said contract was made, the nature thereof, and the time of its expiration? Please state the same particularly, fully, and in detail.

Answer. There was a contract between Swain Thackara and defendant, which was made in the early part of August, 1867. The contract was in substance as follows: That Swain Thackara was to assume the position of general agent, at a nominal salary of five thousand dollars ($5,000) per annum, twelve hundred dollars 393 of which only was to be drawn as subsistence, payable monthly, until such time as the profits of the company should guarantee the payment of the salary in full; which terms he accepted, and held the position about two years. This contract expired, by his resignation, in February, 1869.

Interrogatory fifth. State how and under what circumstances bonds of defendant numbered, respectively, 41, 44, 2, 32, 48, 58, and 76 were issued, and whether or not said bonds were secured by mortgage or other security. State the same fully and particularly.

Answer. Those bonds were issued to parties from whom defendant borrowed money, and were subsequently secured by bond and mortgage by authority of a meeting of the stockholders; myself and Jonathan H. Pugh being the mortgagees and trustees.

Interrogatory sixth. State how and under what circumstances and conditions, if any, if you know, bonds of defendant numbered, respectively, 116, 102, 114, 121, 128, 129, and 131 were issued; state the same fully and in detail.

Answer. I do not know.

Interrogatory seventh. State how and under what circumstances, contract, and conditions, if you know, the certificates of indebtedness of defendant, numbered 108 and 88 were issued; state the same fully and in detail.

Answer. I do not know.

394 Interrogatory eighth. State if you know any contract being made between plaintiff and defendant prior to April, 1872; and, if yea, state the time, duration, and conditions thereof; state the same fully and in detail.

Answer. In February, 1869, Swain Thackara resigned his position as general agent, and the plaintiff was elected in his stead, under the same terms and conditions that his predecessor, Swain Thackara had acted; the plaintiff accepted the position on these terms and conditions, and acted as general agent under the defendant; at the time of plaintiff's election and acceptance he, Swain Thackara, and myself, I then being one of the board of directors, were present; this was at the time of the meeting of the board of directors.

Interrogatory ninth. State what, if any, contract or agreement was made between plaintiff and defendant in April, 1872, or thereabouts; state the terms thereof fully and in detail.

Answer. I do not know of my own personal knowledge.

Interrogatory tenth. State what, if any, if you know, have been the profits of defendant since its organization.

Answer. The company has realized no profits so far whatever.

Interrogatory eleventh. State whether or not plaintiff left Colorado and went to Philadelphia, between April, 1872, and April, 1873; if yea, state the time particularly and your means of knowledge.

Answer. I do not know when he left Colorado; I saw 395 him here several times during the months of January and February, 1873.

Lastly. Do you know of any other matter or thing touching the the matters in controversy in this cause that may tend to the advantage of the plaintiff or defendant in addition to what you have already stated; if yea, state the same as fully and at large as if you had been particularly interrogated in reference thereto.

Ans. I do not know anything further.

Cross-interrogatory first. If, in answer to fifth direct interrogatory, you say that bonds numbered, respectively, 41, 44, 2, 32. 48, 58, and 76 were secured by mortgage, state how you know the said bonds were secured by mortgage, and whether said mortgage is of record, and where it can be found; and, if in answer to same interrogatory, you state that said bonds were secured by other security, state how you know, and whether evidenced by writing, and where the writing can be found.

Answer. I know these bonds were secured by mortgage, because at a meeting of the stockholders I offered the resolution that they should so be secured, and I am also one of the mortgagees named in the mortgage, and the resolution was adopted.

The mortgage is of record in Clear Creek county, Colorado Territory, in the office of recorder, in Book No. 11, pages 17, 18, 19, and 20, of Mortgages.

396 The mortgage is now in my hands, and was handed me by Jonathan H. Pugh, who is the custodian of it and my co-trustee.

Cross-interrogatory second. If, in answer to eighth direct interrogatory, you state that there was a contract entered into between plaintiff and defendant prior to April, 1872, state how you know such contract was made, and whether the same was written or verbal, who were the parties to the same, when and where made, and if in writing, attach a copy thereof hereto.

Answer. I know of the contract when it was made, because I was present, as was also plaintiff; it was not in writing, but verbal: parties to the same were plaintiff and defendant; it was made in February, 1869, at the house of Captain Nelson, where a meeting of the board of directors was being held.

Cross-interrogatory third. If, in answer to ninth direct interrogatory, you say a contract or agreement was entered into between plaintiff and defendant in April, 1872, state how you know such contract was made, by whom it was made, whether in writing or verbal, when, if ever, such contract was abrogated and annulled, by whom it was done, and whether the same was done in the manner prescribed and set forth in such contract or agreement.

Answer. I don't know.

THOS. HARE.

397 Sworn and subscribed to before me, this 30th day of June, A. D. 1873.

J. C. ADDIS, *Com'r.*

WILLIAM H. SHELMERDINE, a witness produced on the part of defendant, who, being duly sworn according to law, deposes and says:

Interrogatory first. What is your name, age, occupation, and place of residence?

Answer. My name is William H. Shelmerdine; age, 30 years;

occupation, banker and broker; residence, in the city and county of Philadelphia.

Interrogatory second. Do you know the parties plaintiff and defendant in this cause, or either, and which of them, and how long have you known them respectively?

Answer. I know both plaintiff and defendant, and have known them about six years.

Interrogatory third. Do you know *Swan* Thackara; if yea, please state how long you have known him, and what position, if any, do you know of his having occupied under or in the employ of the defendant?

Answer. I have known *Swan* Thackara about six years, and I know that he has been in the employ of the defendant as general agent.

Interrogatory fourth. Was there or not any contract between
Swan Thackara and defendant with reference to the employ-
398 ment of said *Swan* Thackara about the business of defendant
in Colorado; and, if yea, state the time when said contract was made, the nature thereof, and the time of its expiration? Please state the same fully and particularly.

Answer. Of my knowledge I do not.

Interrogatory fifth. State how and under what circumstances bonds for defendants numbered, respectively, 41, 44, 2, 32, 48, 58, and 76 were issued, and whether or not said bonds were secured by mortgage or other security; state the same fully and particularly.

Answer. These *were* bonds *were* issued for money loaned to the defendant, and were subsequently secured by mortgage.

Interrogatory sixth. State how and under what circumstances and conditions, if any, if you know, bonds of defendant numbered, respectively, 116, 102, 114, 121, 128, 129, and 131 were issued; state the same fully and in detail.

Answer. These bonds, or certificates of indebtedness, were issued by the company for fifty per centum of the amount subscribed by parties to the stock of the company, and were issued under a contract between the parties and the defendant that they were to be paid out of the first profits of the company only, and under the agreement they [were] accepted by the holders.

399 Interrogatory seventh. State how and under what circum-
stances and conditions, if you know, the certificates of indebtedness of the defendant numbered 108 and 88 were issued; state the same fully and in detail.

Answer. I was present at the meetings of the directors of the company, of which I am one, when certificates numbers 88 and 108 were issued to John W. Thackara for back salary. John W. Thackara was also present at both meetings, and it was distinctly understood and agreed between John W. Thackara and the company that the certificates were not to be paid until the profits of the company guaranteed it, and John W. Thackara accepted the certificates with that understanding and agreement. I handed him the certificates.

Certificate No. 88 was given in December, 1871, and 108 in April, 1872.

Interrogatory eighth. State if you know any contract being made between plaintiff and defendant prior to April, 1872; and, if yea, state the time, durations, and conditions thereof; state the same fully and in detail.

Answer. In February, 1869, Swain Thackara resigned his position as general agent, and plaintiff accepted the position under the same terms and conditions that Swain Thackara had held it, Swain Thackara at the time handing over to John the books and papers pertaining to his office.

400 Interrogatory ninth. State what, if any, contract or agreement was made between plaintiff and defendant in April, 1872, or thereabouts; state the terms thereof fully and in detail.

Answer. There was a contract made between plaintiff and defendant in April, 1872, of the following nature: He was to receive a nominal salary of five thousand dollars per annum, one hundred and fifty per month of which was to be paid him in cash, and the balance of which was to be paid when the company was in condition to pay dividends upon the stock issued.

Interrogatory tenth. State what, if any, if you know, have been the profits of defendant since its organization.

Answer. There has *there has* been no profits since the company's organization.

Interrogatory eleventh. State whether or not plaintiff left Colorado and went to Philadelphia between April, 1872, and April, 1873; if yea, state the time particularly and your means of knowledge.

Answer. I do not know when he left Colorado. I saw him several times in Philadelphia in January and February, 1873.

Lastly. Do you know of any other matter or thing touching the matters in controversy in this cause that may tend to the advantage of the plaintiff or defendant in addition to what you have already stated? If yea, state the same as fully and at large as though you had been particularly interrogated in reference thereto.

401 Answer. I know nothing further.

Cross-interrogatory first. If, in answer to fifth direct interrogatory, you say that bonds numbered, respectively, 41, 44, 2, 32, 48, 58, and 76 were secured by mortgage, state how you know the said bonds were secured by, and where the said mortgage is of record, and where it can be found; and if, in answer to same interrogatory, you state that said bonds were secured by other security, state how you know, and whether evidenced by writing, and where the writing can be found.

Answer. I was at the meeting of the stockholders of defendant when the mortgage was ordered to be given. It is recorded, as appears from the endorsement on its back, which I hold in my hand, in Clear Creek county, Colorado Territory, in recorder's office, in

Book number 11, pages 17, 18, 19, and 20, of Mortgages, and can be found in the possession of Jonathan H. Pugh.

Cross-interrogatory second. If, in answer to eight direct interrogatory, you state that there was a contract entered into between plaintiff and defendant prior to April, 1872, state how you know such contract was made, and whether the same was written or verbal, who were the parties to the same, when and where made, and if in writing, attach a copy thereof hereto.

402 Answer. I know, because I was present at the time the contract was made; in the contract was a verbal one; the parties were plaintiff and defendant; it was made Feb'y, 1869, at the house of Captain Nelson, in Ogden street, above Eleventh street; a meeting of the board of directors was then being held there; both Swain and John W. Thackara were present.

Cross-interrogatory third. If, in answer to ninth direct interrogatory, you say a contract or agreement was entered into between plaintiff and defendant in April, 1872, state how you know such contract was made, by whom it was made, whether in writing or verbal, when, if ever, such contract was abrogated and annulled, by whom it was done, and whether the same was done in the manner prescribed and set forth in such contract or agreement.

Answer. I know that there was a contract, because I was present at a meeting of the board of directors when the contract, which was in writing, and signed by plaintiff, *was in writing, and signed by plaintiff*, was submitted and approved. It was made by John Russell, president of the company, on behalf the company and John W. Thackara. I have been advised by the counsel of the defendant that this contract was abrogated and annulled from the time of the voluntary abandonment by plaintiff of defendant's works, property, and interest in Colorado, and coming to Philadelphia without the authority, consent, or direction of defendant.

WM. H. SHELMERDINE.

403 Sworn and subscribed to before me, this 30th day of June, A. D. 1878.

J. C. ADDIS, *Com'r.*

Jonathan H. Pugh, a witness produced on behalf of defendant, being duly sworn according to law, deposes and says:

Interrogatory first. What is your name, age, occupation, and place of residence?

Answer. My name is Jonathan H. Pugh; my age, 50; occupation, commissioner of city property of Philadelphia; residence, in the city and county of Philadelphia.

Interrogatory second. Do you know the parties plaintiff and defendant in this cause, or either, and which of them, and how long have you known them respectively?

Answer. I know both the parties plaintiff and defendant; I have known plaintiff about nine years and defendant five years.

Interrogatory third. Do you known Swain Thackara; if yea, please state how long you have known him, and what position, if any, do you know of his having occupied under or in the employ of the defendant?

Answer. I do know Swain Thackara; have known about
404 six years; I do not know of my own knowledge what position, if any, he has occupied in the employ of the defendant.

Interrogatory fourth. Was there or not any contract between Swain Thackara and defendant, with reference to the employment of said Swain Thackara about the business of defendant in Colorado; and, if yea, state the time when said contract was made, the nature thereof, and the time of its expiration? Please state the same fully and particularly in detail.

Answer. I was informed by Swain Thackara that he had a contract with the company, and under which he acted as general agent at a nominal salary of five thousand dollars per annum, one hundred of which was to be paid monthly in cash, and the remainder to be paid when the profits of the company guaranteed it.

Interrogatory fifth. State how and under what circumstances bonds of defendant numbered, respectively, 41, 44, 2, 32, 48, 58, and 76 were issued, and whether or not said bonds are secured by mortgage or other security. State the same fully and particularly.

Answer. The bonds of defendant referred, in the interrogatory were given at various dates to the holders thereof for moneys advanced by them to the defendant. At a meeting of stockholders of defendant it was ordered that a bond and mortgage be created and given by the defendant as security for the payment of the
405 bonds. A bond and mortgage was created by the defendant for the security of the bonds to Thomas Hare and myself as trustees.

Interrogatory sixth. State how and under what circumstances and conditions, if any, if you know, bonds of defendant numbered, respectively, 116, 102, 114, 121, 128, 129, and 131 were issued; state the same fully and in detail.

Answer. The bonds referred to in the interrogatory were issued by the company for fifty per centum of the amount subscribed by the holders to the stock of the company, and were issued under a contract between the holders and the defendant that they were to be paid out of the first profits of the company only, and under this amount they were accepted by the holders.

Interrogatory seventh. State how and under what circumstances, contract, and conditions, if you know, the certificates of indebtedness of defendant numbered 108 and 88 were issued. State the same fully and in detail.

Answer. The certificates of indebtedness numbers 88 and 108, one for ten thousand dollars and one for seventeen hundred and eighty dollars and fifty cents, were given by the defendant to the plaintiff in settlement of back salary as general agent of the defendant. They were issued by the defendant and accepted by the plaintiff under the distinct understanding that they were not to be paid until the profits of the company would guarantee their payment.

I was personally present at both meetings of the directors, 406 I being a director, at which meetings these certficates of indebtedness were issued by the defendant, the one for ten thousand dollars in December, 1871, and the other for seventeen hundred and eighty-nine $\frac{50}{100}$ dollars in April, 1872.

The plaintiff, John W. Thackara, was present at both meetings of the board of directors already referred to, and accepted the certificates of indebtedness with the understanding that they were not to be paid until the profits of the company would guarantee it.

Interrogatory eighth. State if you know of any contract being made between plaintiff and defendant prior to April, 1872; and, if yea, state the time, duration, and condition thereof; state the same fully and in detail.

Answer. My knowledge of a contract being made between plaintiff and defendant prior to April, 1872, *arrises* from what the plaintiff, John W. Thackara, told me. He told me that the contract between him and the defendant was the same as that which had existed between his predecessor, Swan Thackara, and the defendant, and which was, as he stated to me, that he went to Colorado in the capacity of general agent for the defendant and was to receive for his services as general agent a nominal salary of five thousand dollars a year, one hundred dollars of which was to be paid monthly in cash and the balance when the profits of the company would guarantee such payment. He told me this in the city of 407 Philadelphia about the fall of 1870, in the store of Charles H. Brown.

Interrogatory ninth. State what, if any, contract or agreement was made between plaintiff and defendant, in April, 1872, or thereabouts; state the terms thereof fully and in detail.

Answer. There was a contract made between plaintiff and defendant in April, 1872, in which he agreed to accept, and did accept, the position of superintendent of the company's business, property, and interests in Colorado, and in consideration therefor the defendant agreed to give, and the plaintiff did accept, as compensation for his services as superintendent, the salary of five thousand dollars a year, one hundred and fifty dollars of which was to be paid monthly, and in cash, and the balance when the defendant is in a condition to pay dividends upon the stock issued by the defendant.

Interrogatory tenth. State what, if any, if you know, have been the profits of defendant since its organization.

Answer. There has been no profits.

Interrogatory eleventh. State whether or not plaintiff left Colorado and went to Philadelphia between April, 1872, and April, 1873; if yea, state the time particularly and your means of knowledge.

Answer. I saw him, John W. Thackara, in the city of Philadel-

phia during the months of January, February, March, and April,
1873, and had conversation with him in said city once during
408 that period at my office.

Lastly. Do you know of any other matter or thing touching the matters in controversy in this cause that may tend to the advantage of the plaintiff or defendant in addition to what you have already stated? If yea, state the same fully and at large as if you had been particularly interrogated thereto.

Answer. I know nothing further.

Cross-interrogatory first. If, in answer to fifth direct interrogatory, you say the bonds numbered, respectively, 41, 44, 2, 32, 48, 58, and 76 were secured by mortgage, state how you know the said bonds were secured by mortgage, and where the said mortgage is of record, and where it can be found; and if, [in] answer to same interrogatory, you state that said bonds were secured by other security, state how you know, and whether evidenced by writing, and where the writing can be found?

Answer. The bonds referred to are secured by mortgage. I know this, because I was present at a meeting of the stockholders of defendant, at which meeting it was ordered that a bond and mortgage be created upon the property of the company as security for the payment of the bonds; the mortgage was created upon the property of the company in Colorado, and in which mortgage myself and Thomas
Hare are mortgagees and trustees to hold this mort-
409 gage, at a meeting of the board of directors held after
the meeting of the stockholders to which I have referred; the meeting of the board of directors of defendant was held on the 19th day of August, 1870, and after the meeting of the stockholders of defendant already referred to, and at which meeting of the board of directors it was ordered that a bond and mortgage on all the real and personal property in Colorado should be made, executed, and delivered to Thomas Hare and myself *in trust;* the mortgage so executed and delivered to myself and Thomas Hare is recorded in Book No. 11, pages 17, 18, 19, and 20, of Mortgages, Clear Creek county, Territory of Colorado; since the return of the mortgage, after its record in Colorado, I have been its sole custodian, and am now; I do not know of the bonds referred to that they are secured by any other security.

Cross-interrogatory second. If, in answer to eighth direct interrogatory, you state that there was a contract entered into between plaintiff and defendant prior to April, 1872, state how you know such contract was made, and whether the same was written or verbal, who were the parties to the same, when and where made, and if in writing, attach a copy thereof hereto.

Answer. All I know concerning the contract referred to was told to me by John W. Thackara, the plaintiff, and that conversation between him and me I have already stated in full in my answer to
the eighth direct interrogatory.

410 Cross-interrogatory third. If, in answer to ninth direct inter-

rogatory, you say a contract or agreement was entered into between plaintiff and defendant in April, 1872, state how you know such contract was made, by whom it was made, whether in writing or verbal, when, if ever, such contract was abrogated and annulled, by whom it was done, and whether the same was done in the manner prescribed and set forth in such contract or agreement.

Answer. At a meeting of the board of directors, of which I was present, a contract in writing and signed by plaintiff was submitted to the board and approved; it was made by John Russell, president of the company, on behalf of the defendant and John W. Thackara, both parties having signed it; the counsel of the company defendant has advised me that the contract referred to was abrogated and annulled simultaneously with the voluntary abandonment by plaintiff of the works, property, and interest in Colorado of defendant; the plaintiff, without the authority, consent, or direction of the defendant, having voluntarily abondoned the property, works, and interests of defendant in Colorado.

J. H. PUGH.

Sworn and subscribed to before me, this 30th day of June, A. D. 1873.

J. C. ADDIS, *Com'r.*

Adjourned to July 1st, 1873, 3½ p. m.

411 JULY 1*st*, 1873, 3½ p. m.

JOHN RUSSELL, a witness produced on behalf of defendant, being duly sworn according to law, deposes and says:

Interrogatory first. What is your name, age, occupation, and place of residence?

Answer. My name is John Russell; my age, 33; my occupation, lawyer; residence, Burlington, State of New Jersey.

Interrogatory second. Do you know the parties plaintiff and defendant in this cause, and either or which of them, and how long have you known them respectively?

Answer. I know both, and have known them since the summer of 1871.

Interrogatory third. Do you know Swain Thackara; if yea, please state how long you have known him, and what position, if any, do you know of his having occupied under or in the employ of the defendant?

Answer. I do know Swain Thackara, and have known him since the spring of 1872. He has stated to me in person several times that he had held the position of general agent under and in the employ of the defendant.

Interrogatory fourth. Was there or not any contract between Swain Thackara and defendant, with reference to the employment of said Swain Thackara about the business of defendant in
412 Colorado; and, if yea, state the time when said contract was made, the nature thereof, and the time of its expiration? Please state the same fully, particularly, and in detail.

Answer. I have no information of my own knowledge in reference to the contract inquired about.

Interrogatory fifth. State how and under what circumstances bonds of defendant numbered, respectively, 41, 44, 2, 32, 48, 58, and 76 were issued, and whether or not said bonds were secured by mortgage or other security; state the same fully and particularly.

Answer. The bonds which form the subject of inquiry represent moneys which were loaned by the holders thereof to the defendant; of my own knowledge I know nothing of the security.

Interrogatory sixth. State how and under what circumstances and conditions, if any, if you know, bonds of defendant numbered, respectively, 116, 102, 114, 121, 128, 129, and 131 were issued; state the same fully and in detail.

Answer. These bonds represent fifty per centum of the amount of stock purchased by the holders thereof, and which the defendant under a contract agreed to pay to the holders of the said bonds from the first profits of the defendant. These bonds were accepted by plaintiff and the other holders, under the agreement with the defendant that they were to be paid out of the first profits of the defendant.

413 Interrogatory seventh. State how and under what circumstances, contract, and conditions, if you know, the certificates of indebtedness numbered 108 and 88 were issued; state the same fully and in detail.

Ans. Certificate of indebtedness No. 88 was issued to the plaintiff in December, 1871, in payment of back salary on the following conditions, that it was not to be paid by the company (defendant) until the profits of the company (defendant) would guarantee such payment; certificate of indebtedness No. 108 was issued to the plaintiff *was issued* April, 1872, and was *was* in full settlement of back salary on the following conditions, that it was not to be paid by the company (defendant) until the profits of the company (defendant) would guarantee such payment; the plaintiff, John W. Thackara, aided by myself and other members of the board of directors, in making an examination of his accounts with the company, and which resulted in the fixing of the amounts of the certificates as the sum due to the plaintiff by the defendant as back salary, and which said sum was payable by the company, defendant, when the profits of the company would guarantee such payment; the plaintiff, John W. Thackara, accepted these certificates of indebtedness in my presence, it being clearly understood and expressed by him *that* [at] the time of the acceptance that they were only evidence of indebtedness to him (plaintiff), which were to become absolutely due only when the profits of the company would guarantee their payment.

414 Interrogatory eighth. State if you know any contract having been made between plaintiff and defendant prior to April,

1872; and, if yea, state the time, duration, and conditions thereof; state the same fully and in detail.

Ans. I have personal knowledge of such contract; the plaintiff, John W. Thackara, having informed me that he had acted, and that at the time he informed me was acting, in the capacity of general agent under and in the employ of the company, defendant; he stated to me frequently that the conditions of that contract between him and the company, defendant, were that he was to receive a salary of five thousand dollars per annum, one hundred dollars of which was to be paid monthly and in cash, and the remainder when the profits of the company would guarantee it.

Interrogatory ninth. State what, if any, contract or agreement was made between plaintiff and defendant in April, 1872, or thereabouts; state the terms thereof fully and in detail.

Ans. There was a contract in writing between the plaintiff and defendant, of dates April 17, 1872, the original of which I now have, and a counterpart of which was delivered to plaintiff in my presence; the copy hereunto annexed, marked with my signature, and by the commissioner as Exhibit "J. C. A," "A," is a true and correct copy of said agreement.

415 Interrogatory tenth. State what, if any, if you know, have been the profits of defendant since its organization.

Answer. There has been no profits.

Interrogatory eleventh. State whether or not plaintiff left Colorado and went to Philadelphia between April, 1872, and April, 1883; if yea, state the time particularly, and your means of knowledge.

Answer. I saw the plaintiff in the city of Philadelphia, in the early part of January, 1873, and subsequently during the month of February, the same year.

Lastly. Do you know of any other matter or thing touching the matters in controversy in this cause that may tend to the advantage of the plaintiff or defendant in addition to what you have already stated; if yea, state the same as fully and at large as if you had been particularly interrogated thereto?

Answer. I have nothing further.

Cross-interrogatory first. If, in answer to fifth direct interrogatory, you say that bonds numbered, respectively, 41, 44, 2, 32, 48, 58, and 76 were secured by mortgage, state how you know that said bonds were secured by mortgage, and where the said mortgage is of record, and where it can be found; and if, in answer to same interrogatory, you state that said bonds were secured by other security, state how you know, and whether evidenced by writing, and where the writing can be found.

416 Answer. I have no personal knowledge of the bonds being secured by mortgage or other security.

Cross-interrogatory second. If, in answer to eighth direct interrogatory, you state that there was a contract entered into between plaintiff and defendant prior to April, 1872, state how you know such contract was made, and whether the same was written or verbal, who were the parties to the same, when and where made, and if in writing, attach a copy thereof hereto.

Answer. My means of knowledge, as I before stated, was from information from plaintiff.

Cross-interrogatory third. If, in answer to ninth direct interrogatory, you say that a contract or agreement was entered into between plaintiff and defendant in April, 1872, state how you know such contract was made, by whom it was made, and whether in writing or verbal, when, if ever, such contract was abrogated or annulled, by whom it was done, and whether the same was done in manner prescribed and set forth in such contract or agreement.

Answer. There was an agreement entered into between plaintiff and defendant in April, 1872, a copy of which is hereto annexed, and marked Exhibit J. C. A., "A"; I know that such a contract was made, because myself and other members of the
board of directors made it in conjunction with John W.
417 Thackara, the plaintiff; the contract was in writing and
I signed it as president of the company for and on behalf
of the company, and in the presence of John W. Thackara, plaintiff; and he, the plaintiff, John W. Thackara, signed it in his own behalf and in my presence. I have been advised by the counsel of the company that the contract of April 17, 1872, was abrogated and annulled by the act of John W. Thackara, plaintiff, by reason of the voluntary abandonment by John W. Thackara of the works, interest, and business of the defendant in Colorado. John W. Thackara, plaintiff, had no authority or direction from the board of directors of the company, defendant, to abandon his post of duty as superintendent of the works, interest, and business of the company defendant in Colorado.

JOHN RUSSELL.

Sworn and subscribed to before me, this first day of July, A. D. 1873.

J. C. ADDIS, *Com'r.*

Alfred Smith, a witness produced on behalf of the defendant, being duly sworn according to law, deposes and says:

Interrogatory first. What is your name, age, occupation, and place of residence?

Answer. My name is Alfred Smith; age, 32; occupation,
418 banker and broker; place of residence, city and county of
Philadelphia.

Interrogatory second. Do you know the parties plaintiff and defendant in this cause, or either, and which of them, and how long have you known them respectively?

Answer. I know plaintiff and defendant, and have known them about two years.

Interrogatory third. Do you know Swain Thackara; if yea, please state how long you have known him, and what position, if any, do you know of his having occupied under or in the employ of the defendant?

Answer. I have known him about two years, and have no personal knowledge of his employment by the company, except from company's books.

Interrogatory fourth. Was there or not any contract between Swain Thackara and defendant with reference to the employment of said Swain Thackara about the business of defendant in Colorado; and, if yea, state the time when said contract was made, the nature thereof, and the time of its expiration. Please state the same fully, particularly, and in detail.

Answer. I have no personal knowledge of such contract.

Interrogatory fifth. State how and under what circumstances bonds of defendant numbered, respectively, 41, 44, 2, 32, 48, 58, and 76 were issued, and whether or not said bonds were secured by mortgage or other security; state the same fully and particularly.
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Answer. I have no personal knowledge in regard to these bonds.

Interrogatory sixth. State how and under what circumstances and conditions, if any, if you know, bonds of defendant numbered, respectively, 116, 102, 114, 121, 128, 129, and 131 were issued; state the same fully and in detail.

Answer. These bonds were issued by the defendant under a contract that they were to be paid by the defendant out of its first profits, and were for fifty per cent. of the amount of stock subscribed by the holders respectively, and were so accepted by the holders thereof.

Interrogatory seventh. State how and under what circumstances and conditions and contract, if you know, the certificates of indebtedness of defendant numbered 108 and 88 were issued; state the same fully and in detail.

Answer. The certificate No. 88 was issued by the defendant to the plaintiff in December, 1871, for back salary as general agent, and was to be paid when the property of the company would guarantee its payment; the certificate number 108 was issued to plaintiff in April, 1872, for the same purpose, and in like manner; I was the chairman of a committee appointed by the defendant to ascertain the amount of salary which would be due plaintiff
420 under his agreement with the company when the profits of
the company would guarantee its payment; plaintiff was present at the meeting and assisted me and the committee in determining the amount; he stated to me that he was serving as general agent for the company for a salary of one hundred dollars cash per month, and the balance, thirty-eight hundred dollars per annum, to be paid by the company when its profits would guarantee the payment of the same; when the amount was ascertained, the certificate numbered 108, which represented the balance; certificate 88 having been given him, he accepted it with the expressed under-

standing and agreement by him to me, that it as well as the other was not to be paid until the profits of the company would guarantee it.

Interrogatory eighth. State, if you know, any contract being made between plaintiff and defendant prior to April, 1872; and, if yea, state the time, duration, and conditions thereof; state the same fully and in detail.

Answer. Plaintiff stated to me that he was then, and had been, acting as general agent for the company on the same terms as his brother, Swain Thackara, had acted; he stated the terms were a salary of five thousand dollars per annum; one hundred dollars per month payable in cash, and the balance to be paid when the profits of the company would guarantee it.

Interrogatory ninth. State what, if any, contract or agree-
421 ment was made between plaintiff and defendant in April,
1872, or thereabouts; state the terms fully and in detail.

Answer. There was a contract made between plaintiff and defendant in April, 1872, of which Exhibit J. C. A., "A," is a copy.

Interrogatory tenth. State what, if any, if you know have been the profits of defendant since its organization.

Answer. There has been none.

Interrogatory eleventh. State whether or not plaintiff left Colorado and come to Philadelphia between April, 1872, and April, 1873; if yea, state the time particularly and your means of knowledge.

Answer. I saw him in Philadelphia once between December, 1872, and March, 1873.

Lastly. Do you know of any other matter or thing touching the matter of controversy in this cause that may tend to the advantage of the plaintiff or defendant in addition to what you have already stated? If yea, state the same os fully and at large as if you had been particularly interrogated in reference thereto.

Answer. I know nothing further.

Cross-interrogatory first. If, in answer to fifth direct interrogatory, you say that bonds numbered, respectively, 41, 44, 2, 32, 48, 58, and 76 were secured by mortgage, state how you know said bonds were secured by mortgage, and where the said mortgage is of record, and where it can be found; and if in answer to same interrog-
atory you state that said bonds were secured by other secu-
422 rity, state how you know, and whether evidenced by writing,
and where the writing can be found.

Answer. I have no personal knowledge.

Cross-interrogatory second. If, in answer to eighth direct interrogatory, you say that there was a contract entered into between plaintiff and defendant, prior to April, 1872, state how you know such contract was made, and whether the same was written or verbal, who were the parties to the same, when and where made, and if in writing, attach a copy thereof hereto.

Answer. I only know of such contract from what plaintiff told me as stated in my answer to eighth interrogatory.

Cross-interrogatory third. If, in answer to ninth direct interrogatory, you say a contract or agreement was entered into between plaintiff and defendant in April, 1872, state how you know such contract was made, by whom it was made, whether in writing or verbal, when, if ever, such contract was abrogated and annulled, by whom it was done, and whether the same was done in the manner prescribed and set forth in such contract or agreement.

Answer. I was present when the contract was made—it was in writing—Exhibit J. C. A., "A," is a copy of it. It was made by the president of the company and plaintiff. By plaintiff's voluntarily abandoning the works and business of defendant in Colorado annulled and abrogated the contract from the time of such
423 abandonment. This I am advised by defendant's counsel was the legal effect of plaintiff's leaving Colorado, and the business of the company without authority from defendant.

ALF. SMITH.

Sworn and subscribed to before me, this first day of July, A. D. 1873.

J. C. ADDIS,
Commissioner.

WILLIAM QUANN, a witness produced on behalf of defendant, being duly sworn according to law, deposes and says:

Interrogatory first. What is your name, age, occupation, and place of residence?

Answer. My name is William Quann; age, 64; occupation, smelter; residence, Philadelphia.

Interrogatory second. Do you know parties plaintiff and defendant in this cause, or either, and which of them, and how long have you known them respectively?

Answer. I have known plaintiff and defendant since the spring of 1871.

Interrogatory third. Do you known Swain Thackara; if yea, please state how long you have known him, and what position, if any, do you know of his having occupied under or in the employ of the defendant.

Answer. I have known Swain Thackara since about the spring of 1871; I do not know what position he occupied under the defendant.

424 Interrogatory fourth. Was there or not any contract between Swain Thackara and defendant, with reference to the employment of said Swain Thackara about the business of the defendant in Colorado; and, if yea, state the time when said contract was made, the nature thereof, and the time of its expiration? Please state the same fully and particularly and in detail.

Answer. I do not know.

Interrogatory fifth. State how and under what circumstances bonds of defendant numbered, respectively, 41, 44, 2, 32, 48, 58, and 76 were issued, and whether or not said bonds were secured by mortgage or other security; state the same fully and particularly.

Answer. I do not know.

Interrogatory sixth. State how and under what circumstances and conditions, if any, if you know, bonds of defendant numbered, respectively, 116, 102, 114, 121, 128, 129, and 131 were issued; state the same fully and in detail.

Answer. I do not know.

Interrogatory seventh. State how and under what circumstances, contract, and conditions, if you know, the certificates of indebtedness of defendant numbered 108 and 88 were issued; state the same fully and in detail.

Answer. I do not know.

425 Interrogatory eighth. State, if you know, any contract being made between plaintiff and defendant prior to April, 1872; and, if yea, state the time, duration, and conditions thereof; state the same fully and in detail.

Answer. I do not know.

Interrogatory ninth. State what, if any, contract or agreement was made between plaintiff and defendant in April, 1872, or thereabouts; state the terms thereof fully and in detail.

Answer. I do not know.

Interrogatory tenth. State what, if any, if you know, have been the profits of defendant since its organization.

Answer. I do not know.

Interrogatory eleventh. State whether or not plaintiff left Colorado and went to Philadelphia betweeh April, 1872, and 1873; if yea, state the time particularly, and in detail.

Answer. On the 19th or 20th of December, 1872, John W. Thackara, the plaintiff, left Colorado for Philadelphia; my means of knowledge are that I left Colorado in his company, and traveled all the way with him to Philadelphia; we arrived at Philadelphia on the night of the 25th of December, 1872.

Lastly. Do you know of any other matter or thing touching the matters in controversy in this cause that may tend to the advantage of the plaintiff or defendant in this cause in addition to what you have already stated; if yea, state the same as fully and at large as if you had been particularly interrogated in reference thereto?

Answer. I do not.

426 Cross-interrogatory first. If, in answer to fifth direct interrogatory, you say that bonds numbered, respectively, 41, 44, 2, 32, 48, 58, and 76 were secured by mortgage, state how you know said bonds were secured by mortgage, and where the said mortgage is of record, and where it can be found; and if, in answer to same interrogatory, you state that said bonds were secured by

other security; state how you know and whether evidenced by writing, and where the writing can be found.

Answer. I know nothing of it.

Cross-interrogatory second. If, in answer to eighth direct interogatory, you state that there was a contract entered into between plaintiff and defendant prior to April, 1872, state how you know such contract was made, and whether the same was written or verbal, who were the parties to the same, when and where made, and if in writting, attach a copy thereof hereto.

Answer. I do not know.

Cross-interrogatory third. If, in answer to ninth direct interrogatory, you say a contract or agreement was entered into between plaintiff and defendant in April, 1872; state how you know such contract was made, by whom it was made, whether in writing or verbal, when, if ever, such contract was abrogated and annulled, by whom it was done, and whether the same was done in the manner prescribed and set forth in such contract or agreement.

Answer. I do not know.

WILLIAM QUANN.

427 Sworn and subscribed before me, this first day of July, A. D. 1873.

J. C. ADDIS, *Com'r.*

I, John C. Addis, of the city and county of Philadelphia and State of Pennsylvania, a commissioner duly appointed to take the depositions of the said Jacob S. Fish, Thomas Hare, William H. Shelmerdine, Jonathan H. Pugh, John Russell, Alfred Smith, and William Quann, whose names are subscribed to the foregoing depositions, do hereby certify, that previous to the commencement of the examination of the said Jacob S. Fish, Thomas Hare, William H. Shelmerdine, Jonathan H. Pugh, John Russell, Alfred Smith, and William Quann, witnesses in the said suit between the said John W. Thackara as plaintiff, and The Fairmount Gold and Silver Mining Company, as defendant, they were duly sworn and affirmed by me to testify the truth in relation to the matters in controversy between the said parties so far as they should be interrogated concerning the same. That the said depositions were taken by me, John C. Addis, and reduced to writing by me, John C. Addis, at the office of the Fairmount Gold and Silver Mining Company, in the city and county of Philadelphia, in the State of Pennsylvania, on the 30th
428 day of June and the 1st day of July, A. D. 1873, and that after said depositions were taken by me as aforesaid, the interrogatories and answers thereto as written down were read over to said witnesses, and that thereupon the same was signed and sworn and affirmed to by the said deponents, Jacob S. Fish, Thomas Hare, William H. Shelmerdine, Jonathan H. Pugh, John Russell, Alfred Smith, and William Quann, before me, at the place and on the days and year last aforesaid.

J. C. ADDIS, *Commissioner.*

EXHIBIT J. C. A.—"A."

John Russell. Attest: J. C. Addis, Com'r.

[U. S. Inter. Rev. stamp, 5c.]

Articles of agreement made and concluded the seventeenth day of April, A. D. 1872, between The Fairmount Gold and Silver Mining Company, a corporation created under and by the authority of an act of Assembly of the State of Pennsylvania, approved the first day of May, A. D. 1866, party of the first part, and John W. Thackara, of the city of Philadelphia and State of Pennsylvania, party of the second part, witnesseth: Whereas the party of the first part is owner of certain mining property located in Clear Creek county, in the Territory of Colorado, and which said mining properties are as follows, to wit: Hanson lode, eight hundred feet; Steele lode, eight hundred feet; Thackara lode, eight hundred feet; Moorehead lode, eight hundred feet; Fairmount lode, fifteen hundred feet, and Goodenough lode, fifteen hundred feet, making in the total thereof six thousand two hundred feet; and whereas it becomes necessary
429 for the party of the first part to employ the services of a person in the capacity of superintendent for the management of the affairs of the party of the first part in Colorado aforesaid, and which more fully appears in Article IV, section six (6), of the by-laws of the party of the first part, and which are as follows, to wit:

Article IV. Officers and their duties.

Section 6. Superintendent.

The superintendent of the company shall, upon the first day of every month, make out and forward a statement of the amount of money he requires for the use of the company for the month next ensuing to the president, who shall present the same to the board of directors for approval. He shall, on the first day of every month, make out and forward a statement in detail of all moneys received, disbursed, and expended by him for and in behalf of the company, with vouchers, to the president, who shall present the same to the board of directors for approval, and shall perform all the duties of his office as the board of directors may from time to time direct. He shall employ the services of such persons necessary to conduct the mining business of the company in Colorado, and submit the names of such persons so employed to the president, to be presented by the president to the board of directors for approval.

Now, therefore, the party of the first part agrees, and by these presents doth agree, to employ the services of John W. Thackara, party of the second part, in the capacity of superintendent,
430 for the period of one year from the date of these presents, for considerations and upon conditions hereinafter specified. The party of the first part agrees, and by these presents doth agree, to pay to the said John W. Thackara, party of the second part, for and in consideration of his services as superintendent, the sum of

five thousand dollars salary for one year from the date of these presents, of which said sum the party of the second part, shall receive only at the rate of one hundred and fifty dollars in cash for each and every month until that point of time is reached when the party of the first part is in a condition to pay dividends upon the stock issued by the party of the first part, and at which time the party of the second part shall be paid his salary in full, and thereafter in equal monthly payments. And the said John W. Thackara, party of the second part, agrees, and by these presents doth agree, to accept the employment of the party of the first part in the capacity of superintendent, and to enter upon and perform the duties of superintendent as hereinbefore fully set forth, and for the consideration, and upon the conditions hereinbefore also set forth at large, and further, to faithfully perform all the duties of superintendent to the best of his skill and ability, to the exclusion of his individual behoofs and interests. And the said Fairmount Gold and Silver Mining Company, party of the first part, and the said John W. Thackara, party of the second part, agrees, and by these presents doth agree, to give the one to the other, three months'
431 notice of the intention of either party to terminate this agreement, which said notice shall be given prior to the expiration of this agreement, and which said notice shall be in writing, and the said Fairmount Gold and Silver Mining Company, party of the first part, and the said John W. Thackara, party of the second part, agree, and by these presents doth agree that, in the event of failure of notice, the one to the other, as hereinbefore provided for, that then, and in that case, this agreement shall continue to have full force and effect for one year, subject to like considerations and conditions to be given prior to the termination thereof.

In witness whereof the said parties to these presents have herewith set their hands and seals the day and year aforesaid.

[SEAL.] (S'g'd) JOHN RUSSELL,
President of the Fairmount Gold and Silver Mining Company.
(S'g'd) JOHN W. THACKARA. [L. S.]

Signed, sealed, and delivered in presence of—
ALFRED SMITH.
C. H. DAVISS.

Commissioner's fee, $45; paid by defendants. J. C. Addis, com'r.

432 TERRITORY OF COLORADO, *Clear Creek County*, } *ss:*

The people of the Territory of Colorado to John C. Addis, of city of Philadelphia, Pennsylvania, greeting:

Whereas it has been represented to us that Jacob S. Fish, Thomas Hare, Wm. H. Shelmerdine, Jonathan H. Pugh, John Russell, Alfred Smith, and William Quann are material witnesses in a certain cause now depending in our district court, for the second judistated; if yea, state the same as fully and at large as if you had been particularly interrogated in reference thereto.

FRANK A. POPE,
Defendant's Attorney.

John W. Thackara plaintiff in this suit, by G. B. Reed his attorney, objects and accepts to defendants' third and fourth interrogatories, for the reason that the testimony sought is irrelevant and immaterial, also to defendants' fifth, sixth, and seventh interrogatories for the same reason, and the further reason that the 437 evidence sought to be elicited would be incompetent and inadmissible to defeat or impeach the said writings obligatory.

G. B. REED, *Att'y for Pl'ff.*

Cross-Interrogatories.

Cross-interrogatory first. If, in answer to fifth direct interrogatory, you say that bonds numbered, respectively, 41, 44, 2, 32, 48 58, and 76, were secured by mortgage; state how you know the said bonds were secured by mortgage, and where the said mortgage is of record and where it can be found; and, if in answer to same interrogatory you state that said bonds were secured by other security, state how you know and whether evidenced by writing, and where the writing can be found?

Cross-interrogatory second. If, in answer to 8th direct interrogatory, you state that there was a contract entered into between plaintiff and defendant prior to April, 1872; state how you know such contract was made, and whether the same was written or verbal, who were the parties to the same, when and where made, and if in writing attach [—] thereof hereto?

Cross-interrogatory third. If, in answer to 9th direct interrogatory, you say a contract or agreement was entered into between plaintiff and defendant in April, 1872; state how you know such contract was made, by whom it was made, whether in writing 438 or verbal, when, if ever, such contract was abrogated and annulled, by whom it was done, and whether the same was done in the manner prescribed and set forth in such contract or agreement?

G. B. REED,
Att'y for Plaintiff.

I do hereby waive the notice and consent that a *dedimus potestatum*, or commission, may issue at once in the above-entitled cause, saving and reserving any and all other objections.

June 17th, 1873.

G. B. REED,
Pl'ff's Attorney.

Afterwards, to wit, on the 18th day of July, A. D. 1873, the said plaintiff, by his said attorney, filed his demurrer to defendant's pleas in said cause, in words and figures following, to wit:

TERRITORY OF COLORADO, *County of Clear Creek:*

In the District Court. 2d Judicial District of the Special July Term, A. D. 1873.

JOHN W. THACKARA, Pl'ff,
vs.
THE FAIRMOUNT GOLD AND SILVER MINING CO., Deft.

439 And the said plaintiff as to the pleas of the said defendant by it secondly and thirdly above pleaded, and also as to all the said pleas by it afterwards heretofore, to wit, on the 31st day of May, A. D. 1873, pleaded, and by the said defendant therein, firstly, secondly, thirdly, and fourthly pleaded as additional pleas to those before that time pleaded, and to each of the said pleas so as aforesaid pleaded, says that the same and each of them, and the matters and things in each of them contained in manner and form as the same are therein pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining *its* aforesaid action thereof against the said defendant, and that the said plaintiff is not bound by law to answer the same, and this he is ready to verify. Wherefore, by reason of the insufficiency of the said pleas, and each of them in that behalf, the said plaintiff prays judgment of his debt aforesaid, together with his damages by him sustained, on account of the detention thereof to be adjudged, &c.

G. B. REED,
Att'y for Pl'ff.

And the said plaintiff according to the form of the statute in such case made and provided, for causes of demurrer to the second of the original pleas by the said defendant originally pleaded, shows to the court the following, to wit:

440 1st. For that the aforesaid-mentioned and described pleas do not, nor do any or either of them, show or state any matter of defense to the aforesaid action.

2d. The aforesaid-mentioned and described pleas do not, nor does any or each of them, show or state any consideration for the supposed undertakings, and promises in *them*, or any or either of them, pretended.

3d. For that the said defendant has not concluded its said pleas, or any or either of them, by putting itself upon the country, &c.

4th. For that the said pleas filed heretofore, to wit, on the 31st day of May, A. D. 1873, and pretended to be additional pleas were filed in vacation and without leave of court, and after this said cause had been duly put to issue.

5th. For that the matters and things in each, the second, third, and fourth, of the said pleas above-pleaded, and filed on the 10th day of April, 1873, are not pleaded in bar as set off to, or in reference of the plaintiff's debt, and show nothing in defence of said cause of action in declaration mentioned, neither do they, or either of them, show whether the said supposed abandonment of the said defendant's business and employment, was not the fault of the said defendant.

6th. For that the said second plea purports to be, to the whole
of the counts of said declaration of said plaintiff, and it does
441 not show or pretend any defense to either the 5th, 6th, 7th,
8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, and
18th, counts of the said declaration of plaintiff.

7th. For that the first of the said pleas filed on the said 31st day of May, A. D. 1873, purports to be a defence to the whole of said counts in said plaintiff's declaration; and it does not show or pretend any defence to either the 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 counts of said declaration.

8th. For that the second of the said pleas, filed as last aforesaid, purports to be a defence to the whole of the several counts in the said declaration, and does not show or pretend any defence to each 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 18 counts of said declaration.

9th, For that the third of the said pleas filed as last aforesaid, purports to be a defence to the whole of the several counts in said declaration, and it does not show or pretend any defence to each the 1, 2, 3, 4, 6, 12, 13, 14, 15, 16, 17, and 18 counts of said declaration.

10th. For that the fourth of the said pleas filed as last aforesaid, purports to be a defence to the whole of the several counts in said declaration, and it does not show or pretend any defence to the
eighteenth count of said declaration.
442 11th. For that the said pleas, and each of them, from and
after, and including the second plea to, and including the
eighth by it pleaded, and the matters and things in each of them contained, show nothing in defence of the said action and the several counts thereof in said pleas contained and mentioned.

G. B. REED,
Attorney for Pl'ff.

Afterwards, to wit, on the 16th day of October, A. D. 1873, the said plaintiff, by his said attorney, filed in said cause his præcipe for alias writ of attachment in words and figures following, to wit:

TERRITORY OF COLORADO, *County of Clear Creek:*

In the District Court, 2d Judicial District. To the April Term, A. D. 1874.

JOHN W. THACKARA *vs.* FAIRMOUNT GOLD AND SILVER MINING COMPANY, Def't.	In Attachment.

The clerk of the district court, 2d judicial district, will please issue an alias writ of attachment in above cause, directed to the sheriff of said county.

G. B. REED,
Att'y for Pl'ff.

To JOHN R. CLEAVELAND, Esq., *Clerk District.*

443 And thereupon, an alias writ of attachment was issued in said cause, in words and figures following, to wit:

The people of the Territory of Colorado to the sheriff of Clear Creek county, Greeting:

Whereas, John W. Thackara hath complained on oath to J. R. Cleaveland, clerk of the district court of the second judicial district, in and for the county of Clear Creek, that the Fairmount Gold and Silver Mining Company, is justly indebted to the said John W. Thackara, to the amount of twenty-one thousand nine hundred and two dollars and six cents, and oath having also been made that the said Fairmount Gold and Silver Mining Company is a foreign corporation, and the said John W. Thackara, having given bond and security according to the directions of the act in such cases made and provided.

We therefore command you, as we have before commanded you, that you attach so much of the estate, real and personal, of the said Fairmount Gold and Silver Mining Company, to be found in your county, as shall be of value sufficient to satisfy the said debt and costs, according to the complaint; and such estate, so attached in your hands to secure, so as to provide that the same may be liable to further proceeding thereupon, according to law, at a court to be holden at Georgetown, for the said county of Clear Creek,
444 upon the first Tuesday of April, 1874, next; so as to compel the said Fairmount Gold and Silver Mining Company to appear and answer the complaint of the said John W. Thackara, and that you also summon as a garnishee, to be and appear at the said court, on the said day of next [——,] then and there to answer to what may be objected against, where and when you shall make known to the said court how you have executed this writ, and have you then and there this writ.

Witness, J. R. Cleaveland, clerk of our said court, and the seal thereof, this 16th day of October, A. D. 1873.

J. R. CLEAVELAND, *Clerk.*
ED. C. PARMELEE, *Deputy.*

Afterwards, and upon the 11th day of November, the said alias writ of attachment was filed in said cause, endorsed in words and figures following, to wit:

TERRITORY OF COLORADO, } *ss:*
Clear Creek County, }

I have duly levied the within writ upon the following described property, to wit: 2 12 in. leather belts; 2 8 in. do.;

2 2 in. do.; 1 8 in. gum belt; 1 6 in. do.; 1 3 in. do;
445 14 shafting and fixtures, 10 counter-shafting fixtures, 11 extra clutches, 13 do. pinions, 2 do. couplings, 4 do. crown wheels, 4 do. arm irons, 3 do. shaft boxes, 1 small crank shaft and pulley, 1 extra iron pulley, 12x12; 1 set taps, stock, and dies, 1 gold pan, 1 lot red brick, 1 iron pulley, 8x16; 6 barrels fire clay, 1 bbl. Portland cement, 8 bbls. fluxes, half bbl. lampblack, 100 bushels charcoal, 1 bellows, 1 elevator box, 1 wire screen, lot cast and wrought iron, 20 tons ore in mill, 100 tons ore and tailings in mill, 15 tons ore at the mine, more or less; 1 Chillian mill, 1 pr. iron trucks, 2 bbls. ashes, 4 bbls. shells, 2 bbls. glass, 2 bags bonedust; also, 1 Sturtevant's blower, No. 6; about 3,000 fire brick, 8 bbs. fire clay. Said last-mentioned property will be sold by me, October 28th, 1873, under executions of Freas and Tappan; also, 1 vice, 1 anvil, 1 rope, 13-feet pulley, 1 blacksmith's hammer, 2 sledges, 2 set tongs, 3 files, 1 differential pulley, 1 piece of belting of Faivre's store. The shafting, pulleys, pinions, belting, and clutches above-described are the same mentioned in the original writ in this suit, this 23d day of October, 1873, all the above property in Clear Creek county, Colorado, and taken as the property of the Fairmount Gold and Silver Mining Company.

P. A. SKESHAN, *Sheriff.*
By P. S. BAILY, *Deputy.*

446 Afterwards, to wit: on the 18th day of June, A. D. 1874, the said defendant, by its attorney, filed in said cause its additional pleas, together with its copy of account in words and figures, to wit:

TERRITORY OF COLORADO, } *ss:*
County of Clear Creek, }

In District Court of Clear Creek County aforesaid. June Term, 1874.

JOHN W. THACKARA
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY.

And the said defendant, by Frank A. Pope, its attorney, for a further plea in this behalf, says *actio non*, because it says the said supposed writings obligatory in the said declaration mentioned, nor any of them are its deed, and of this it puts itself upon the country, &c.

FRANK A. POPE,
Def't's Att'y.

And plaintiff doth the like.

G. B. REED,
Att'y for Pl'ff.

And the said defendant for a further plea in this behalf, says *actio*

non, because it says that after the making of the said several
447 writings obligatory in said declaration mentioned and before
the bringing of this suit, to wit: on the 1st day of March,
A. D. 1873, if the defendant paid to the plaintiff the sum of thirty thousand dollars in full payment and satisfaction of said writings obligatory and each of them, and in full payment and satisfaction of all claims, demands, and causes of action against defendant, which said sum the said plaintiff then and there accept of, and from the defendant in full payment and satisfaction as aforesaid, and this the said defendant is ready to verify, wherefore it prays judgment, &c.

FRANK A. POPE,
Def'ts Att'y.

And for a further plea in this behalf, the defendant says, *actio non*, because it says that before and at the time of the commencement of this suit, to wit, on the 1st day of March, A. D. 1873, the said plaintiff was, and still is, indebted to the defendant in the sum of thirty thousand dollars for goods, chattels, and effects, before that time sold and delivered by the defendant to the plaintiff at his request, and in the like sum for money before that time lent by the defendant to the plaintiff at his request; and in the like sum for money before that time paid, laid out, and expended by the defendant for the use of the plaintiff, at his request; and in the like sum for money before that time had and received by the plaintiff for the
use of the defendant; and in the like sum for interest on
448 divers sums of money before that time foreborne by the de-
fendant to the plaintiff, at his request, for divers spans of time before then elapsed; and in the like sum for money found to be due from plaintiff to defendant on an account then and there stated between them, which said sum of money so due from the plaintiff to the defendant as aforesaid, exceed the damages sustained by the plaintiff, by reason of the non-performance by the defendant of the said several agreements and promises in the said declaration mentioned, and out of which said several sums of money the defendant is ready and willing, and hereby offers to set off and allow to the plaintiff the full amount of the said debt and damages; and this the defendant is ready to verify. Wherefore he prays judgment, &c.

FRANK A. POPE,
Def't's Att'y.

TERRITORY OF COLORADO, } ss:
County of Clear Creek, }

In the District Court of Clear Creek County aforesaid, June Term, A. D. 1874.

JOHN W. THACKARA
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY.

Copy of Account, with Plea of Set-off.

1872.	Pl'ff to Def't.	
April 17.	To cash	$2,500 00
449		
June 1.	"	2,822 98
July 1.	"	3,000 00
Aug. 1.	"	3,500 00
Sept. 3.	"	2,500 00
Oct. 5.	"	4,000 00
		$18,322 98

Afterwards, to wit, at a term of the said district court of said county, begun and holden at Georgetown, in said county, on the 7th day of December, A. D. 1874, before the Honorable Moses Hallett, chief justice of said Territory, and presiding at said December term—present, Honorable Moses Hallett, chief justice and judge, presiding; John R. Cleaveland, clerk, by Ed. C. Parmelee, deputy; Patrick A. Skeohan, sheriff, by Presley S. Baily, deputy—and upon the 8th day of December, A. D. 1874, the same being one of the regular days of the said December term, the said plaintiff, by his said attorney, filed in said cause his replication, in words and figures following, to wit:

TERRITORY OF COLORADO, } ss:
County of Clear Creek, }

In the District Court, 2d Judicial District, of the May Term, A. D. 1874.

450 JOHN W. THACKARA, Pl'ff,
vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY, Def't. } Debt.

And the plaintiff, as to the 2d additional plea by the defendant above pleaded, says that he, the plaintiff, by reason of anything in that plea alleged, ought not to be barred from having his aforesaid action, because he says that the defendant did not pay to the plaintiff the moneys in the said second plea in that behalf mentioned, in full satisfaction and discharge of the said several promises and sums of money in the said declaration mentioned, nor any part thereof, in manner and form as the defendant has above in that plea alleged; and this the plaintiff prays may be inquired of by the country, &c.

G. B. REED and L. F. YATES,
Att'ys for Pl'ff.

And the said plaintiff, as to the 3d additional plea by the said defendant above pleaded, says that he, the plaintiff, by reason of anything in the said plea alleged, ought not to be barred from having his aforesaid action, because he says that he, the plaintiff, was not nor is indebted to the defendant in manner and form as the defendant has above in that plea alleged; and this the defendant prays may be inquired of by the country, &c.

G. B. REED and L. F. YATES,
Att'ys for Pl'ff.

451 And upon the 19th day of December, A. D. 1874, the same being one of the regular days of the December term of said court, the said plaintiff filed in said cause articles of agreement and instruments in writing as follows, to wit:

Articles of agreement made and concluded the seventeenth day of April, A. D. 1872, between the Fairmount Gold and Silver Mining Company, a corporation created under and by the authority of an act of Assembly of the State of Pennsylvania, approved the first day of May, A. D. 1866, party of the first part, and John W. Thackara, of the city of Philadelphia, and State of Pennsylvania, party of the second part: Witnesseth, whereas the party of the first part, is owner of certain mining properties located in Clear Creek county, in the Territory of Colorado, and which said mining properties are as follows, to wit:

Hanson lode, eight hundred feet.
Steel lode, eight hundred feet.
Thackara lode, eight hundred feet.
Moorehead lode, eight hundred feet.
Fairmount lode, fifteen hundred feet, and
Goodenough lode, fifteen hundred feet, making in the total thereof six thousand two hundred feet: and whereas, it becomes necessary for the party of the first part to employ the services of a person in the capacity of a superintendent for the management of the affairs of the party of the first part in Colorado, as aforesaid, and
452 which more fully appears in article IV., section 6, of the by-laws of the party of first part, and which are as follows, to wit:

Article IV. Officers and their duties.

Section 6. Superintendents.

The superintendent of the company shall, upon the first day of every month, make out and forward a statement of the amount of money he requires for the use of the company for the month next ensuing, to the president, who shall present the same to the board of directors for approval. He shall, on the first day of every month, make out and forward a statement in detail of all moneys received, disbursed, and expended by him for and in behalf of the company, with vouchers, to the president, who shall present the same to the board of directors for approval, and shall perform all the duties of his office as the board of directors may from time to time direct. He shall employ the services of such persons necessary to conduct the mining business of the company in Colorado, and submit the names of such persons so employed to the president, to be presented by the president to the board of directors for approval.

Now, therefore, the party of the first part agrees, and by these presents doth agree, to employ the services of John W. Thackara, party of the second part, in the capacity of superintendent, for the period one year from the date of these presents, for considerations and upon conditions hereinafter specified.

The party of the first part agrees, and by these presents
453 doth agree, to pay to the said John W. Thackara, party of
the second part, for and in consideration of his services as superintendent, the sum of five thousand dollars, as salary for one year, from the date of these presents, of which said sum the party of the second part shall receive only at the rate of one hundred and fifty dollars in cash, for each and every month, until that point of time is reached when the party of the first part is in a condition to pay dividends upon the stock issued by the party of the first part, and at which time the party of the second part shall be paid his salary in full, and thereafter in equal monthly payments.

And the said John W. Thackara, party of the second part, agrees, and by these presents doth agree, to accept the employment of the party of the first part, in the capacity of superintendent, and to *the* enter upon and perform the duties of superintendent, as hereinbefore fully set forth, and for the considerations, and upon the conditions, hereinbefore also set forth at large, and further to faithfully perform all the duties of superintendent to the best of his skill and ability, to the exclusion of his individual behoofs and interests.

And the said Fairmount Gold and Silver Mining Company, party of the first party, and the said John W. Thackara, party of the second part, agree, and by these presents doth agree, to give the one to the other three month's notice of the intention of either
party to terminate this agreement, which said notice shall be
454 given prior to the expiration of this agreement, and which
said notice shall be given in writing.

And the said Fairmount Gold and Silver Mining Company, party of the first part, and the said John W. Thackara, party of the second part, agree, and by these presents doth agree, that in the event of failure of notice the one to the other, as hereinbefore provided for, that then, and in that case, this agreement shall continue to have full force and effect for one year, subject to like considerations and conditions, and like requirements as to notice to be given prior to the termination thereof.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year aforesaid.

[Stamp.] JOHN RUSSELL, [L. S.]
President of the Fairmount Gold and Silver Mining Company.
JOHN W. THACKARA. [L. S.]

Signed, sealed, and delivered in presence of—
ALF'D SMITH.
C. H. DAVIS.

[Stamp.] No. 117. PHILADELPHIA, *May* 3, 1872.

One day after date the Fairmount Gold and Silver Mining Co. promise to pay to the order of Jno. W. Thackara twenty
455 dollars, in lawful money of the United States, with 6 per cent. interest, upon the presentation of this certificate, and which said certificate is issued to the holder thereof, by and under the provisions of a resolution of the board of directors, December 30th, 1871.

[L. S.] JOHN RUSSELL, *President.*
$20.00. ALF'D SMITH, *Treasurer.*
WM. H. SHELMERDINE, *Sec.*

No. 116. [Stamp.] PHILADELPHIA, *April* 30, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of Jno. W. Thackara thirty dollars, in lawful money of the United States, with 6 per cent. interest, upon the presentation of this certificate, and which said [certificate] is issued to the holder thereof, by and under the provisions of a resolution of the board of directors of date December 30, 1871.

[L. S.] JOHN RUSSELL, *President.*
$30. ALF'D SMITH, *Treasurer.*
WM. H. SHELMERDINE, *Sec.*

[Stamps.] PHILADELPHIA, *April* 17, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of John W. Thackara one thousand seven hundred and eighty-nine $\frac{50}{100}$ dollars, in lawful money of the United States, with 6 per cent. interest, payable in gold, upon the redemption of this bond.

[L. S.] JOHN RUSSELL, *President.*
456 $1,789 $\frac{50}{100}$. ALF'D SMITH, *Treasurer.*
WM. H. SHELMERDINE, *Sec.*

PHILAD'A, *December* 13*th*, 1871.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of John W. Thackara ten thousand dollars, in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[L. S.] JOHN RUSSELL, *President.*
[Stamp.] ABRAM C. BROWN, *Treasurer.*
Countersigned by the sec'y :
WM. H. SHELMERDINE, *Secretary pro tem.*

PHILAD'A, *December 13th*, 1871.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of John W. Thackara ten thousand dollars, in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[L. S.] JOHN RUSSELL, *President.*
[Stamp.] ABRAM C. BROWN, *Treasurer.*
Countersigned by the sec'y:
WM. H. SHELMERDINE, *Secretary pro tem.*

No. 43. [Stamp.] PHILADELPHIA, *April 12th*, 1869.

One year after date, or sooner, at the option of the directors, the directors, the Fairmount Gold and Silver Mining Company promise to pay to the order of Swain Thackara one hundred $\frac{0}{100}$ dollars, lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[Stamp.] CHAS. H. BROWN, *President.*
457 ABRAM C. BROWN, *Treasurer.*
Countersigned by the secretary :
T. J. CLINGER, *Secretary.*

(Endorsed :) Berlin, N. J., January 22d 1873. I do hereby transfer all my right and title to the within bond or note to J. W. Thackara. Swain Thackara. [L. S.] Witness present. Lizzie Suber.

No. 44. [Stamp.] PHILADELPHIA, *May 17th*, 1869.

One year after date, or sooner, at the option of the directors, the Faimount Gold and Silver Mining Company promise to pay to the order of John P. Harker twenty $\frac{0}{100}$ dollars in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[L. S.] CHAS. H. BROWN, *President.*
ABRAM. C. BROWN, *Treasurer.*
Countersigned by the secretary :
T. J. CLINGER, *Secretary.*

Endorsed : Berlin, N. J., 1869. I do hereby transfer all my right, title, and interest to the within bond or note to Swain Thackara for his own use and benefit. John P. Harker. Witness present. Margaret P. Harker. Berlin, N. J., January 22, 1883. I do hereby transfer all my right, title, and interest to the within bond or note to J. W. Thackara. Swain Thackara. Witness present. Lizzie Suber.

458 No. 2. [Stamp.] PHILADELPHIA, *August 5th*, 1868.

One year after date, or sooner, at the option of the directors, the Fairmount Gold and and Silver Mining Company promise to pay to the order of Abram C. Brown, two hundred and fifty $\frac{0}{100}$ dollars, in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[L. S.]
CHARLES H. BROWN, *President.*
ABRAM C. BROWN, *Treasurer.*

Countersigned by the secretary :
T. J. CLINGER, *Secretary.*

(Endorsed :) Pay to the order of J. W. Thackara. Abram C. Brown.

No. 32. [Stamp.] PHILADELPHIA, *August 5th*, 1868.

One year after date, or sooner, at the option of the directors, the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown three hundred thirty-three $\frac{33}{100}$ dollars, in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[L. S.]
CHAS. H. BROWN, *President.*
ABRAM C. BROWN, *Treasurer.*

Countersigned by the secretary :
T. J. CLINGER, *Secretary.*

(Endorsed :) Pay to the order of J. W. Thackara. Abram C. Brown.

No. 48. [Stamp.] PHILADELPHIA, *July 6th*, 1869.

One year after date, or sooner, at the option of the direc-
459 tors, the Fairmount Gold and Silver Mining Company prom-
ise to pay to the order of Abram C. Brown one thousand
and eighty-three $\frac{33}{100}$ dollars, in lawful money of the United States,
with six per cent. interest, payable in gold, upon the redemption of
this bond.

[L. S.]
CHAS. H. BROWN, *President.*
ABRAM C. BROWN, *Treasurer.*

Countersigned by the secretary.
T. J. CLINGER, *Secretary.*

(Endorsed :) Pay to the order of J. W. Thackara. Abram C. Brown.

No. 58. [Stamp.] PHILADELPHIA, *Oct. 9th*, 1869.

One year after date, or sooner, at the option of the directors, the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown, six hundred and eighty, 680 dollars in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[L. S.] CHAS. H. BROWN, *President.*
[Stamp.] ABRAM C. BROWN, *Treasurer.*
Countersigned by the secretary:
T. J. CLINGER, *Secretary.*

(Endorsed:) Pay to the order of J. W. Thackara. Abram C. Brown.

No. 76. [Stamp.] PHILADELPHIA, *M'c'h* 31, 1870.

One year after date, or sooner, at the option of the directors, the Fairmount Gold and Silver Mining Company promise to pay
460 to the order of Abram C. Brown, three hundred and fifty $\frac{69}{100}$ dollars, in lawful money of the United States, with six per cent. interest, payable in gold, upon the redemption of this bond.

[L. S.] CHAS. H. BROWN, *President.*
[Stamp.] ABRAM C. BROWN, *Treasurer.*
Countersigned by the secretary:
T. J. CLINGER, *Secretary.*

(Endorsed:) Pay to the order of J. W. Thackara. Abram C. Brown.

No. 114. [Stamp.] PHILADELPHIA, *Ap'l 30th*, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown sixty dollars, in lawful money of the United States, with six per cent. interest, upon the presentation of this certificate, and which said certificate is issued to the holder thereof by and under provisions of a resolution of the board of directors, of date December 30th, 1871.

[L. S.] JOHN RUSSELL, *President.*
$60. ALF'D SMITH, *Treasurer.*
WM. H. SHELMERDINE, *Sec.*

(Endorsed:) Pay to the order of J. W. Thackara. Abram C. Brown.

No. 121. PHILADELPHIA, *May* 24, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown, twenty-five dollars in lawful money of the United States, with 6 per cent.
461 interest, upon the presentation of this certificate, and which said certificate is issued to the holder thereof, by and under the provisions of a resolution of the board of directors, of date December 30th, 1871.

[L. S.] JOHN RUSSELL, *President.*
[Stamp.] $25. ALF'D SMITH, *Treasurer.*

Endorsed: Pay to the order of J. W. Thackara. Abram C. Brown.

No. 128. PHILADELPHIA, *July 2d*, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown, one hundred and ninety dollars in lawful money of the United States, with 6 per cent. interest, upon the presentation of this certificate, and which said certificate is issued to the holder thereof, by and under the provisions of a resolution of the board of directors, of date June 9th, 1872.

[L. S.] JOHN RUSSELL, *President.*
[Stamp.] WM. H. SHELMERDINE, *Treasurer.*
ALFRED SMITH, *Secretary.*

Endorsed: Pay to the order of J. W. Thackara. Abram C. Brown.

No. 129. PHILA., *August 15th*, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown, five hundred dollars in lawful money of the United States, with 6
462 per cent. interest, upon the presentation of this certificate,
and which said certificate is issued to the holder thereof, by and under the provisions of a resolution of the board of directors, of date December 30th, 1871.

[L. S.] JOHN RUSSELL, *President.*
[Stamp.] WM. H. SHELMERDINE, *Treasurer.*
ALFRED SMITH, *Secretary.*

Endorsed: Pay to the order of J. W. Thackara. Abram C. Brown.

No. 131. PHILADELPHIA., *August 28th*, 1872.

One day after date the Fairmount Gold and Silver Mining Company promise to pay to the order of Abram C. Brown, two hundred and fifty dollars in lawful money of the United States, with 6 per cent. interest, upon the presentation of this certificate, which said certificate is issued to the holder thereof, by and under the provisions of a resolution of the board of directors, of date June 19th, 1872.

[L. S.] JOHN RUSSELL, *President.*
[Stamp.] WM. H. SHELMERDINE, *Treasurer.*
ALFRED SMITH, *Secretary.*

Endorsed: Pay to the order of J. W. Thackara. Abram C. Brown.

And upon the same day, to wit, the day and year last aforesaid, proceedings were had in said *cause* as follows, to wit:

JOHN W. THACKARA
vs.
FAIRMOUNT GOLD AND SILVER MINING CO. } 907. Attachment.

463 Now comes said plaintiff, by G. B. Reed, Esq., his attorney, and said defendant, by F. A. Pope, Esq., its attorney, also comes, and this cause comes on for hearing. Thereupon came a jury of good and lawful men, to wit: Hollis K. Pierson, Joseph R. Simons, H. Clay Cowles, Sherman G. Sackett, Jerry G. Mahany, John B. Lawson, Nathan W. Thayer, Thomas Osborne, Harold H. Berdon, Andrew F. Kurtis, Walter B. Berry, and John Lyons, who were duly empannelled and sworn, to well and truly try the issues joined, sat together, heard the evidence, the arguments of counsel, and instructions of the court, and retired to their room to deliberate in charge of a sworn officer, and after being absent for a while said jury return into court their verdict, as follows:

"We, the jury, find the issues for the plaintiff, and assess his damages at the sum of twenty-three thousand four hundred and forty-two $\frac{12}{100}$ dollars ($23,442$\frac{12}{100}$)."

And now comes said defendant and moves the court for a new trial of this cause.

And at the same time, to wit, the day and year last aforesaid, instructions to the jury were filed in said cause, in words and figures following, to wit:

Plff.:

The court instructs the jury that if they believe from the evidence that the defendant quit and suspended the work upon its mines, mills, and machinery in the Territory of Colorado, and of its own
464 act terminated its engagement with the plaintiff and thereby
rendered it impossible to pay a dividend upon its stock, and that the services specified in the agreement given in evidence were performed by the plaintiff, then, that the plaintiff is entitled to recover from the defendant his full salary, as specified in the contract, for the time he was employed as the superintendent of the defendant.

Given.

If the jury believe from the evidence that the business of the defendant in this Territory required the personal attention of and supervision of the plaintiff, from and after the 20th day of Dec., 1872, and that the plaintiff, without the permission of the defendant, or any of its officers, quitted the Territory and did not return until March following, they will not allow the plaintiff salary after the said 20 Dec.

Given.

The jury in computing the amount of indebtedness, if they find for the plaintiff, will exclude from their calculation any items or charges constituting a running account; that is to say, the various charges not deduced from the written instruments, unless they find a promise by the company to pay, or an admission by the company that some certain amount was due on such running account.

Refused.

If the jury believe from the evidence that the defendant, in the year 1873, in the month of April, employed the plaintiff to 465 come to Colorado to attend to its business in Colorado for the term of one year, and that the plaintiff, in the month of December, 1872, on the 20th day of that month left the business of that company in Colorado and repaired to Philadelphia without the permission of the defendant or any order from them, and that he left the business of defendant without his personal supervision, then they should not in computing the salary of the plaintiff consider any part of the time after the plaintiff abandoned the business of the company in Colorado on said Dec. 20, 1872, provided that they consider that such journey under circumstances was an abandonment of his employment as agent.

Afterwards, upon the 2d day of January, A. D. 1875, the said defendant by its attorney, filed in said cause its motion for a new trial, in words and figures following, to wit:

TERRITORY OF COLORADO,
County of Clear Creek, } *ss*:

In the District Court of Clear Creek County aforesaid. December Term, A. D. 1875.

JOHN W. THACKARA
vs.
THE FAIRMOUNT GOLD & SILVER MINING COMPANY.

And now comes the said defendant by Frank A. Pope and 466 Butler & Morrison, its attorneys, and moves the court to set aside the verdict of the jury herein and grant a new trial of this cause, for the following reasons, to wit:

1. Because the court erred in admitting irrelevant, improper, and incompetent evidence on the part of the plaintiff.
2. Because the court erred in rejecting relevant and proper evidence offered by the defendant.
3. Because the court erred in giving to the jury erroneous and improper instructions on the part of the plaintiff.
4. Because the court erred in refusing to give the jury proper and correct instructions asked for by the defendant.
5. Because the court erred in giving to the jury on its own motion improper and erroneous instructions.
6. Because the verdict of the jury is contrary to the evidence.
7. Because the verdict is contrary to the law of the case.
8. Because the verdict is excessive.

467 9. Because the proceedings are otherwise irregular, informal, and insufficient.

FRANK A. POPE,
BUTLER & MORRISON,
Def't's Att'ys.

And upon the 13th day of January, A. D. 1875, it being still of the said December term of said court, A. D. 1874, proceedings were had as follows, to wit:

JOHN W. THACKARA
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY. } 907. Attachment.

On this day this cause come on to be heard upon defendant's motion for a new trial; after the argument of counsel the court, being fully advised in the premises, overruled said motion; and now again comes said defendant, by its attorneys, and moves the court in arrest of judgment, which motion was also by the court denied.

The jury, by whom the issues in this cause was tried, having rendered a verdict therein in favor of the plaintiff and against the defendant, and for the sum of twenty-three thousand four hundred and forty-two dollars and twelve ($23,442$\frac{12}{100}$) over and above his costs and charges in that behalf expended. Wherefore it is considered that said plaintiff do recover against the said defendant his debt and damages aforesaid, in form aforesaid, assessed together with his costs and charges aforesaid, to be taxed, and that plaintiff have execution therefor. 468

And the defendant's motion in arrest of judgment, filed in said cause, is in words and figures following, to wit:

TERRITORY OF COLORADO,
County of Clear Creek, } *ss:*

In the District Court of the Second Judicial District of said Territory in and for said county. To the December Term, A. D. 1874.

JOHN W. THACKARA
vs.
THE FAIRMOUNT GOLD AND SILVER MINING CO.

And now comes the said defendant, by Frank A. Pope, Hugh Butler, and R. S. Morrison, its attorneys, and moves the court to arrest the judgment in said cause for reasons following, to wit:

1st. The verdict is not in *form* to support a judgment in debt, being for damages only, and not that the defendant is indebted, &c.

2d. The instruments, as declared on, will not support a verdict or judgment in debts.

3d. Because a judgment in currency cannot be entered for gold sued for, or declared on.

469 4th. For the reasons set forth in motion for new trial.

FRANK A. POPE,
H. BUTLER,
R. S. MORRISON,
Attorneys for Defendant.

And upon the same day and year, to wit, the day and year last aforesaid, proceedings were had as follows, to wit:

JOHN W. THACKARA
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY. } 907. Attachment.

And now comes said defendant, by R. S. Morrison, its attorney, and prays an appeal to the Supreme Court, which is by the court allowed, upon the defendant giving bond in the sum of five thousand dollars, with security to be approved by the clerk of this court within thirty days from the date hereof, and that it file its bill of exceptions within thirty days from this date.

STATE OF COLORADO,
Clear Creek County, } *ss:*

JOHN W. THACKARA
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY. } 907. Attachment.

470 I, the undersigned, clerk of the district court in and for the county of Clear Creek, in the first judicial district of the State of Colorado, do hereby certify the above and foregoing to be true, perfect, and complete copies of all the files and records in the above-entitled cause in said court, and all of which are now on file in my office.

Witness my hand and the seal of said court, this 1st day of March, A. D. 1878.

[SEAL.] (S'g'd) H. H. ATKINS, *Clerk.*

Endorsed: 124. Hare and Pugh *vs.* F. G. and S. Mining Company. Record.

TERRITORY OF COLORADO,
Clear Creek County, } *ss:*

The people of the Territory of Colorado to the sheriff of Clear Creek county, Greeting:

We command you that of the lands and tenements, goods and chattels of the Fairmount Gold and Silver Mining Company, defendant, in your county, you cause to be made the sum of twenty-three thousand four hundred and forty-two dollars and 471 twelve cents, which John W. Thackara, plaintiff, lately in the district court of the second judicial district in and for said county, at a term thereof, began and holden at Georgetown, in said county, on the first Monday of December, 1874, recovered against the said defendant, and which by said court was adjudged to the said plaintiff for his damages by him in this behalf sustained.

And also the further sum of three hundred and eighteen dollars and sixty-five cents, which was adjudged to the said plaintiff for his costs and charges in that behalf expended, whereof the said defendant stands convicted as appears to us of record; and have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid, and make return of this writ with an endorsement thereon in what manner you shall have executed the same in ninety days from the date hereof.

Witness J. R. Cleaveland, clerk of our said court, and the seal thereof, at Georgetown, in said county of Clear Creek, this 16th day of February, A. D. 1875.

[L. S.]

J. R. CLEAVELAND, *Clerk.*
ED. C. PARMELEE, *Deputy.*

TERRITORY OF COLORADO,
Clear Creek County District Court, } *ss:*

JOHN W. THACKARA
vs.
FAIRMOUNT G. AND S. M. Co. } Plaintiff's Costs.

472	Clerk's fees		$51 90
	Sheriff on writ	$14 50	
	Sheriff on alias	14 75	
	For custodian	237 50	
			266 75
			$318 65

I hereby certify the foregoing to be a true copy from my fee-book of plaintiff's costs.

J. R. CLEAVELAND, *Clerk.*
ED. C. PARMELLE, *Deputy.*

"Endorsed:" 907. Execution *fiera facias.* John W. Thackara *vs.* Fairmount G. and S. M. Co,

Damages	$23,442 12
Costs	318 65
	$23,760 77

Interest, $539.49.

Judgment rendered Jan'y 13th, 1875. Collect interest at ten per cent. per annum from above mentioned date of judgment.

Received this execution this 16th day of February, at 10 o'clock a. m., 1875.

P. A. SKEOHAN, *Sheriff.*
P. S. BAILEY, *Deputy.*

TERRITORY OF COLORADO, } *ss:*
Clear Creek County, }

473 By virtue of the within execution, I have levied on the following-described property, to wit, eight hundred feet on the Morehead Extension lode; 800 feet on the Thackara lode; 800 feet on the Steel lode; 800 feet on the Hanson lode; 1,500 feet on the Goodenough lode; 1,500 feet on the Fairmount lode; the Fairmount tunnel consisting of 3,000 feet, and the mill site, mill buildings, furnace buildings, furnaces, and blacksmith shops erected by and belonging to said Fairmount Company, and known as the Fairmount mill property; also one 40-horse power engine, one large Chillian mill, shafting, and fixtures, one Dodge crusher, one *Clark's* patent fan-blower, one No. 6 Sturtevant's blower, fourteen *pieces* shafting and fixtures, ten *erastra* shafts, eleven extra clutches, thirteen extra pinions, two extra *couplings*, four extra crown wheels, three extra shaft-boxes, four extra arm irons, one small crank shaft and pulley, one extra iron pulley 12 x 12 inches, one extra iron pulley 8 x 16 inches, one set of pipes, stock, and dies, thirty sections of iron piping, one large monkey-wrench, one pair pipe-tongs, two wrought iron water tanks, two large wooden water tanks, one blacksmith's bellows, one anvil, one vise, two sets of *bugs*, one smith's hammer, two sledges, one 3-foot wooden pulley, iron boxed, one differential pulley, one lot of steel and iron bars and rods, one lot of *grate* bars, 1 copper gold pan, one elevator box, 3 wire screens, one piece of gum *hose*, one double-acting force pump, one
474 large heating stove, one office stove, two double *leather* belts, 12 inches, one single leather belt, 8 inches, two single leather belts, 2 in., one gum belt, 8 inches, one gum belt, 6 inches, one gum belt, three inches, twenty tons of ore in furnace buildings, one hundred tons of ore and tailings in the mill, fifteen tons of ore at Fairmount mine, eight large fire tiles, one lot of fire brick, one lot of red brick, eight barrels of fire clay, one barrel of Portland cement, eight barrels of *fluxes*, one-half barrel of lampblack, one lot of charcoal, two barrels of anthracite ash, four barrels oyster shells, two barrels of glass, two bags of bone dust, six cords of wood, one carpenter's bench, one wrought iron smoke stack.

All of said property situated, lying, and being in Spanish Mining District, Clear Creek county, Territory aforesaid, and taken as the property of the Fairmount Gold and Silver Mining Co., this 16th day of February, A. D. 1875.

P. A. SKEOHAN, *Sheriff.*
By P. S. BAILY, *Deputy.*

I have further executed this writ on this 13th day of March, 1875, by selling the above-described property at public auction, at the Fairmount mill, having advertised said property 20 days, according to law, and the same was struck off and sold to John W. Thackara, as follows, to wit: the personal property was sold for the sum

475 of $229.70, and the real estate was sold for the sum of $24,643.31, making the sum total of $24,873.01, which sum satisfies this writ in full.

I offered said real estate for sale in separate lots and having no bids therefor I offered the whole for sale in one lot or bid, and was sold as aforesaid.

P. A. SKEAHAN, *Sheriff.*
P. S. BAILEY, *Deputy.*

Levying writ	$2 00
Mileage	6 00
1 Extra trip to mill	20 00
Ad. property	19 00
Com. on $24,300	521 00
Certificate and rec	4 00
Return	75
	$572 75

Filed April 13th, 1875.

CHASE WITHROW, *Clerk.*
H. H. ATKINS, *Deputy.*

STATE OF COLORADO,
Counto of Clear Creek, } *ss:*

JOHN W. THACKARA
vs.
FAIRMOUNT G. & S. M. CO. } No. 907.

I, H. H. Atkins, clerk of the district court of Clear Creek 476 county, do hereby certify that the foregoing transcript is a true and correct copy of a certain execution in the above cause, now on file in my office.

Attest my hand and the seal of said court, this 10th day of Dec., A. D. 1878.

[SEAL.] (S'g'd) H. H. ATKINS, *Clerk.*

I, P. A. Skeahan, sheriff of Clear Creek county, Colorado Territory, do hereby certify that by virtue of a writ of execution issued out of and under the seal of the district court of the second judicial district in and for said county, at the December term, A. D. 1874, said execution being issued on the 16th day of February, A. D. 1875, to me directed, against the goods and chattels, lands and tenements of the Fairmount Gold and Silver Mining Company in said county, and in favor of John W. Thackara, I levied on the following described property, to wit: 800 feet on the Morehead extension lode, 800 feet on the Thackara lode, 800 feet on the Steel lode, 800 feet on the Hanson lode, 1,500 feet on the Goodenough lode 1,500 feet on the Fairmount lode, the Fairmount tunnel, consisting of 3,000 feet, and the mill site, mill buildings, furnace buildings, furnaces, and blacksmith-shop erected by and belonging

to said Fairmount Company, and known as the Fairmount
477 mill property all in Spanish Bar Mining District, all of said property situate, lying, and being in Clear Creek county, Territory aforesaid, and by virtue of said execution I proceeded to sell the same at public vendue on the 13th day of March, A. D. 1875, at 2 o'clock p. m. of that day, at the Fairmount Mill, in Hukill Gulch, at which time John W. Thackara bid the sum of $24,643.31 for the interest of the said Fairmount Gold and Silver Mining Co., in and to said premises, which, being the highest bid for the same, they were struck off and sold to the said John W. Thackara for twenty-four thousand six hundred forty-three and $\frac{31}{100}$ dollars, and the said John W. Thackara, his heirs, or his assigns, will be entitled to a deed for the same at the expiration of nine calendar months from the date hereof, if not sooner redeemed, according to law.

GEORGETOWN, *Mch. 13th*, 1875.

P. A. SKEOHAN,
Sheriff of Clear Creek County.
By P. S. BAILY, *Deputy.*

Recorded March 23d, 1875, at 2½ o'clock p. m.
H. A. SPRUANCE,
Recorder.

STATE OF COLORADO,
Clear Creek County, } *ss:*

478 I, S. S. Horton, clerk and recorder of said county, hereby certify that the foregoing is a true, correct, and complete copy of instrument recorded at page 445, of book 29, of the records of said county, together with the certificate of the recording thereof.

Witness my hand and official seal, this December 11th, 1878.

[SEAL.] (S'g'd) S. S. HORTON,
Clerk and Recorder.

Whereas, John W. Thackara did, at the December term, A. D. 1874, of the district court for the county of Clear Creek, and Territory of Colorado, recover judgment against the Fairmount Gold and Silver Mining Company for the sum of twenty-four thousand six hundred and forty-three dollars and thirty-one cents ($24,643.31), upon which judgment, execution was issued, dated on the 16th day of February, A. D. 1875, directed to the sheriff of said county to execute, and by virtue of said execution the sheriff levied upon the lands and property hereinafter described, and duly advertised the same for sale according to law, and the time and the place of said sale; and whereas, the said John W. Thackara, on the day of said sale, the same being the thirteenth day of March, A. D. 1875, was the highest and best bidder, the said property hereinafter described, was struck off and sold to him for the sum of twenty-four
479 thousand six hundred and forty-three dollars and thirty-one cents, ($24,643.31,) and a certificate of sale was on the said

13th day of March, A. D. 1875, made and executed and delivered to the said John W. Thackara according to law; and whereas, on the 6th day of May, A. D. 1875, the said John W. Thackara did sell, assign, and in writing transfer the said certificate of sale to Gilbert B. Reed, and the full time of redemption having expired—

Now, therefore, know all men by these presents, that I, John C. Easley, sheriff of the said county of Clear Creek, in consideration of the premises, and the said sum of twenty-four thousand six hundred and forty-three dollars and thirty-one cents, ($24,643.31,) so bid as aforesaid by the said John W. Thackara, and by virtue of the said assignment of the said certificate of sale, as aforesaid, by the said John W. Thackara to the said Gilbert B. Reed, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said Gilbert B. Reed, his heirs and assigns forever, the following-described property, situate and being in Spanish Bar Mining District, county of Clear Creek, and Territory of Colorado, and being the same property described in said certificate of sale, to wit: Eight hundred (800) feet on the
Morehead Extension lode, eight hundred (800) feet on the
480 Thackara lode, eight (800) hundred feet on the Steel lode, eight
hundred (800) feet on the Hanson lode, fifteen hundred (1,500) feet on the Good Enough lode, fifteen hundred (1,500) feet on the Fairmount lode, the Fairmount tunnel, consisting of three thousand (3,000) feet, and the mill site, mill buildings, furnace buildings, furnace, and blacksmith-shop erected by and belonging to said Fairmount Company, and known as the Fairmount mill property. To have and to hold the said described premises, with all the appurtenances thereunto belonging, to the said Gilbert B. Reed, his heirs and assigns forever.

Witness my hand and seal, this 15th day of December, A. D. 1875.

JOHN C. EASLEY, [SEAL.]
Sheriff for Clear Creek County.

TERRITORY OF COLORADO, } *ss:*
County of Clear Creek, }

Be it known that on this 15th day of December, A. D. 1875, before me, the undersigned, personally appeared John C. Easley, sheriff of said county of Clear Creek, and to me personally known to be the person who executed the foregoing deed of conveyance, as party thereto, and acknowledged that he executed the same, for the uses and purposes therein set forth, as sheriff of said
county.
481 In witness whereof, I have hereunto set my hand and the seal of said county, the day and year last aforesaid.

[L. S.] A. MEDLEY,
Clerk and Recorder.

Recorded December 15th, 1875, at 10 o'c. a. m.

A. MEDLEY, *Recorder.*

STATE OF COLORADO,
Clear Creek County, } *ss:*

I, S. S. Horton, clerk and recorder of said county, hereby certify that the foregoing is true, correct, and complete copy of an instrument recorded at page 430 of book No. 34 of the records of said county, together with the certificate of the recording thereof.

Witness my hand and official seal, this December 11th, 1878.

[SEAL.] S. S. HORTON,
Clerk and Recorder.

Endorsed: 124. Hare and Pugh, trustees, *vs.* Fairmount Gold and Silver Mining Co'y. Transcript. Filed December 23, 1878. S'g'd Edward F. Bishop, clerk. King, att'y.

482 And afterward, and on, to wit, the twenty-third day of December, A. D. 1878, came again the said complainants, by J. Q. A. King, Esq., their solicitor, and filed in said court and in said cause the certificate of incorporation of said company; and the said certificate of incorporation is in words and figures as follows, to wit:

Articles of Incorporation Fairmount G. and S. M. Co.

An act to incorporate the Fairmount Gold and and Silver Mining Company.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, that John J. Fullmer, M. D., Charles Page, John R. Hunter, John A. Bell, John W. Thackara, Henry B. Kennedy, Joseph Hancock, John Ginnods, and Jonathan Dorris, and their associates be, and they are hereby, created a body politic, by the name, style, and title of the Fairmount Gold and Silver Mining Company," and by such name and title shall have perpetual succession, and shall be capable of suing and being sued, impleading and being impleaded, and of granting and receiving in its corporate name property, real, personal, and mixed, and of holding and improving lands in Colorado Territory, in
the United States, and to obtain therefrom any and all minerals
483 and valuable substances, whether by working or mining or
leasing or disposing of privileges to work or mine such land, or any part thereof, and to erect houses and such other build[ings] and works as may, in the opinion of the managers of the corporation, appertain to the said business, and to use, let, lease, or work the same and dispose of the property of all such lands, mines, and works as they may deem proper.

Section 2. That the said company shall have power to make such by-laws as they may deem proper to enable them to carry out the objects of the corporation, and the same to alter, amend, add to or repeal, at their pleasure—

Provided such by-laws shall not be contrary to the constitution of this Commonwealth or the provisions of this act, and to adopt a common seal, and the same to alter at pleasure, and to issue certficates of stock representing the value of their property in such form and subject to such regulations as they may from time to time by their by-laws prescribe, and to regulate and prescribe in what manner and form their contracts and obligations shall be executed; provided, that the capital stock shall not be more than two hundred thousand dollars.

484 Section 3. That the corporators named in this act shall elect seven persons to serve as directors of the company, a majority of whom shall constitute a quorum for the transaction of business, and shall hold their offices until their successors shall be elected, in accordance with the by-laws.

Section 4. That it shall be lawful for the said company to establish the necessary offices for the business of the company wherever their business is located, and to have their principal office in the city of Philadelphia, at which place it shall be lawful to hold all meetings for the transaction of the business of the company; provided, that the organization of any of said Territories as States shall not prejudice the rights and privileges herein granted to the said company.

JAMES R. KELLEY,
Speaker of the House of Rep's.
DAVID FLEMING,
Speaker of the Senate.

Approved the first day of May, Anno Domini one thousand eight hundred and sixty-six.

A. G. CURTAIN.

485 OFFICE OF THE SECRETARY OF THE COMMONWEALTH,
HARRISBURG, *November 10th, A. D.* 1875.

PENNSYLVANIA, *ss:*

[SEAL.] I do hereby certify, that the foregoing and annexed is a full, true, and correct copy of the original act of the General Assembly entitled, "An act to incorporate the Fairmount Gold and Silver Mining Company," as the same remains on file in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the secretary's office to be affixed, the day and year above written.

(S'g'd) JOHN B. LINN,
Deputy Secretary of the Commonwealth.

In the name and by the authority of the Commonwealth of Pennsylvania, John F. Hartranft, Governor of the Commonwealth, to all to whom these presents shall come, sends greeting:

[SEAL.]

Know ye, that the attestation, or certificate hereunto attached

is in due form and made by the proper officer, and that John B.
486 Linn, whose name is subscribed thereto, was, at the time of subscribing the same, and now is deputy secretary of the Commonwealth duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly.

Given under my hand and the great seal of the State, at Harrisburg, the 10th day of November, in the year of our Lord one thousand eight hundred and seventy-five, and of the Commonwealth the one hundredth.

[SEAL.] (S'g'd) J. F. HARTRANFT,
Governor.

(S'g'd) M. S. QUAY,
Secretary of the Commonwealth.

Endorsed: 124. Hare and Pugh, trustees, *vs.* Fairmount Gold and Silver Mining Company and others. Certificate of incorporation. Filed Dec. 23, 1878. S'g'd Edward F. Bishop, clerk. Presented by J. Q. A. King, for compl'ts.

487 And afterwards, and on to wit, the twenty-second day of January, A. D. 1879, came again the said complainants, by John Q. A. King, Esq., their solicitor, and filed in said court and in said cause, their motion for leave to file affidavits of Fish, and to take additional testimony, and the said motion is in words and figures, as follows, to wit:

Motion for Leave to File Affidavit of Fish.

UNITED STATES CIRCUIT COURT, *District of Colorado:*

THOMAS HARE and JONATHAN PUGH, Plaintiffs,
vs.
FAIRMOUNT GOLD AND SILVER MINING CO., &c., Def'ts.
} Motion.

The plaintiffs move the court to open and publish the depositions of defendants, taken by them in Philadelphia, Penn., in this case; also to file affidavit of Jacob S. Fish, as testimony in the case, or as a foundation to cross-examine said Fish, *or* retake his deposition *on com'n*, and also for leave to take additional testimony.

HARE & PUGH, *Trustees.*
By JOHN Q. A. KING, *Att'y.*

Jan'y 22d, 1879.

488 Endorsed: No. 124. Circuit court U. S. Hare & Pugh, trustees, *vs.* Fairmount Gold and Silver Mining Co., &c. Motion for leave to file aff'ts of Fish, and to take additional testimony. Filed Jan. 22, 1879. S'g'd Edward F. Bishop, clerk. John Q. A. King, att'y.

And afterwards, and on to wit, the twenty-second day of January, A. D. 1879, came again the said complainants, by John Q. A. King, Esq., their solicitor, and filed in said court and in said cause their notice of filing, motion, and proof of service, and the said notice of filing motion is in words and figures as follows, to wit:

Notice of Filing Motion, &c.

UNITED STATES CIRCUIT COURT, *District of Colorado:*

THOMAS HARE and JONATHAN H. PUGH, Trustees, &c., Complainants,
vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY, and G. B. REED *et als.*, Defendants.
} Equity Notice.

489 The defendants are notified that we will appear in the circuit court foresaid on the 22d day of January, 1879, and make a motion before Hon. Moses Hallett, judge of said court, for an order to open and publish the deposition taken by defendants in the city of Philadelphia, Penn., in the above cause, and will offer to file the affidavit of Jacob S. Fish therein, either as testimony or as a foundation to take Jacob S. Fish's testimony, or by way of cross-examination, and for leave to take additional testimony in the case on commission, when and where you can attend.

January 20th, 1879.

HARE & PUGH, *Trustees.*
By JOHN Q. A. KING, *Att'y.*

Rule 69, Code 137.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

Denver Col'o, Jan'y 21, 1879, I have duly served the within, by delivering to G. B. Reed a true copy of the within at Denver city, Arrapahoe county, Colorado, this 21st day of January, A. D. 1879, as I am commanded.

(S'g'd) P. P. WILCOX,
U. S. Marshal.
By SIM. W. CANTRIL,
Deputy.

Fees, $100 paid.

490 Endorsed: No. 124. Circuit Court U. S. Hare and Pugh, Trustees, *vs.* Fairmount Gold and Silver Mining Company, G. B. Reed *et als.* Notice of filing motion and proof of service. Filed Jan. 22, 1879. (S'g'd) Edward F. Bishop, clerk. John Q. A. King, att'y.

And afterwards and on, to wit, the twenty-second day of January, A. D. 1879, came again the said complainants, by their solicitor aforesaid, and filed in said court, and in said cause, the affidavit of Jacob S. Fish, and the said affidavit is in words and figures, as follows, to wit:

Affidavit of Fish.

State of Pennsylvania, } ss:
City and County of Philadelphia, }

Personally appeared before me, Jacob S. Fish, residing at 1024 Melon street, in said city, and who having been sworn by me according to law, doth depose and say, to wit: that he appeared as a witness for the defendants in a suit pending in the circuit court of the United States for the district of Colorado, wherein Thomas Hare and Jonathan H. Pugh, trustees, are plaintiffs, and Gilbert B. Reed and the Fairmount Gold and Silver Mining 491 Company and others are defendants. That upon the ninth day of December, A. D. 1878, he testified as such witness, amongst other things, in the following manner and form, to wit: "I surrendered these bonds to the company about 1873, and took in place thereof stock of the company. This stock I hold to-day, *a part of it* a part of it I sold, but did not get the money for it, hence I gave it away."

The deponent further says, that his entire testimony was read over to him by the commissioner who took the testimony, one Adam Tindell, Esq., number 227 South Sixth st., in the said city of Philadelphia, siting as commissioner under a *dedimus potestatum*, issued from the circuit court of the United States for the district of Colorado.

That at the time of the reading of the said testimony very much confusion and noise prevailed, and prevented the testimony from being clearly understood, and that he signed the said testimony under the circumstances herein set forth.

The deponent further says, that he hesitated to sign his testimony, but that the commissioner assured him that it was all right. That upon reflection, he concluded that his testimony was not such as he intended to testify, and that he called upon the counsel of the defendants, one Thomas J. Ashton, Esq., number 217 South Sixth street, in said city of Philadelphia, upon the 492 morning of the next day after he testified, to wit, upon the morning of December 10th, A. D. 1878, at his office, and requested him to take him before the commissioner, and to permit him to correct his testimony in some material points; this counsel for the defendants refused to do. That on the 19th of December, A. D. 1878, at which date the commissioner was sitting to take testimony, the witness, Jacob S. Fish, appeared before the said commissioner, and offered himself to correct his testimony, and which offer was held under advisement by the commissioner; that the commissioner refused at a subsequent date, to wit, December 23d, A. D. 1878, to allow the correction to be made, and said that he would forward the testimony as it stood.

The deponent further says, that according to the testimony already referred to, and quoted in this affidavit, that he appears to have said that he sold part of the stock which he received from the

Fairmount Gold and Silver Mining Company in consideration for bonds of the said Company, which he had converted conditionally under a resolution of the said company.

The deponent further says, that he did not intend to say that he sold the stock which he had received when he converted his bonds, but, on the contrary, he intended to say, and did say, that he sold stock of the company, which he had in his possession long before the stock of the company which he received for his bonds came into his possession, and that he has not sold any part of the stock which came into his possession in consideration for the 493 bonds which he converted conditionally.

The deponent further says, that the bonds sued on in this action are just, due, and unpaid, and that he requested the trustees, Thomas Hare and Jonathan H. Pugh, to commence this action on his behalf.

(S'g'd) J. S. FISH.

Sworn and subscribed before me, this fourteenth day of January, A. D. 1879.

[SEAL.] (S'g'd) CHAS. P. CLARKE,
U. S. Com'r.

Endorsed: No. 124. Circuit court U. S. Hare and Pugh, trustees, *vs.* Fairmount Gold and Silver Mining Company *et als.* Affidavit of Jacob S. Fish. Filed Jan. 22, 1879. S'g'd Edward F. Bishop, clerk.

And afterwards, and on, to wit, the twenty-eighth day of January, A. D. 1879, the same being one of the regular juridical days of the December term, A. D. 1878, of said court. Present: the Honorable Moses Hallett, district judge; the following proceeding was had and entered of record in said court and in said cause, to wit:

Order to open Depositions, &c.

494 THOMAS HARE *et. al.*, TRUSTEES, &c., *vs.* FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.* } In chancery. For an account.

At this day come the said complainants, by J. Q. A. King, Esq., their solicitor, and the said defendanta, by G. B. Reed, Esq., their solicitor, also come.

And thereupon it is ordered that depositions in this cause now in the office of the clerk be opened, published, and filed as of this day.

And the motion of the said complainants for leave to file herein the affidavit of Jacob S. Fish, touching his deposition heretofore taken in behalf of the said defendants in this cause, coming on now to be heard, is argued by counsel, and the court being now sufficiently advised in the premises,

It is ordered that the said complainants have leave to take the deposition of Jacob S. Fish in their behalf within twenty (20) days from this day; and thereupon the said motion is denied.

Depositions—behalf of Defendants.

And afterwards, and on, to wit, the twenty-eighth day of January, A. D. 1879, there was opened, published, and filed in said court and in said cause, depositions taken on behalf of the said defendants; and the said depositions are in words and figures, as follows, to wit:

495 *Dedimus Potestatum, U. S. Circuit Court, Colo.*

United States of America.

UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

The President of the United States of America to Adam Tindel, Esq., an attorney at law, residing at Philadelphia, in the county of and State of Pennsylvania, Greeting:

Whereas, it has been represented that Abram C. Brown, Ambrose H. Prichett, Peter Miller, R. C. Shelmerdine, William H. Shelmerdine, Jacob S. Fish, Aaron S. Dunlery, Ezra Willets, David T. Clinger, Jabez Lewis, James Durnel, Ezra Pratt, Horatio Roop, Thomas J. Clinger, and Adam Tindell, are material witnesses in a certain cause now pending in the circuit court of the United States for the district of Colorado, wherein Thomas Hare and Jonathan H. Pugh, trustees, are complainants, and Fairmount Gold and Silver Mining Company are defendants, and that the said witnesses reside at Philadelphia aforesaid, without the said district of Colorado, and that their personal attendance cannot be procured at the trial of the said cause.

Now, know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority as commissioner, to examine the said witnesses, and you are therefore authorized and required to cause the said witnesses to come before you, at such time and place as you may therefor designate and appoint, and diligently to examine the said witnesses on the oath or affirmation of the said witness by you first duly in that behalf administered, and faithfully to take the deposition orally, of the said witnesses on the part of the said defendants, and none other, and the same when thus taken, together with this commission to certify into our said circuit court, in a sealed envelope, with the least possible delay. 496

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in the district aforesaid, this 13th day of November, A. D. 1878, and of the Independence of the United States the 103d year.

[SEAL.] S'g'd EDWARD F. BISHOP, *Clerk.*

31—328

UNITED STATES CIRCUIT COURT, } Sct.
District of Colorado, }

HARE AND PUGH, Trustees, } Stipulation.
vs. }
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY, *et als.* }

The undersigned parties agree that defendants, Reed and
497 others, may take out commission, to be forwarded to Philadelphia, Penn., to take depositions *orally* for defendant; we waiving notice and filing interrogatories and cross-interrogatories.

S'g'd HARE AND PUGH,
By J. Q. A. KING, *Solicitor.*
G. B. REED, *For Def'ts.*

Endorsed: 94. District Court U. S. Thomas Hare et al., trustees, *vs.* Fairmount Gold and Silver Mining Co. Stipulation to take oral testimony. Filed Nov. 13, 1878. S'g'd Edward F. Bishop, clerk. G. B. Reed, sol'r for def'ts.

The depositions of William H. Shelmerdine, Thomas J. Clinger, Jacob S. Fish, and Thomas Hare, of the county of Philadelphia and State of Pennsylvania, witnesses of lawful age, produced, sworn, (the said Jacob S. Fish being affirmed,) and examined upon their corporal oaths, the said Jacob S. Fish, upon his corporal affirmation, on the ninth day of December, A. D. 1878, at the office of Adam Tindel, No. 227 South Sixth street, in the city of Philadelphia, in the county of Philadelphia, and state aforesaid, by me, Adam Tindel, commissioner, duly appointed by a *dedmius potestatum*,
498 issued out of the clerk's office of the circuit court of the United States for the district of Colorado, bearing teste in the name of the Chief Justice of the United States, and the seal of said court affixed thereto, and to me directed as such commissioner for the examination of the said William H. Shelmerdine, Thomas J. Clinger, Jacob S. Fish, and Thomas Hare, witnesses in a certain suit and matter in controversy now pending and undetermined in the said circuit court, wherein Thomas Hare and Jonathan H. Pugh, trustees, are complainants, and Fairmount Gold and Silver Company are defendants, in behalf of the said defendants, orally, the said William H. Shelmerdine, Thomas J. Clinger, and Thomas Hare being first duly sworn, and the said Jacob S. Fish being first duly affirmed by me, as witnesses in the said cause previous to the commencement of their examination to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matter in controversy between the said plaintiffs and defendant, testified and deposed as follows:

Deposition of William H. Shelmerdine.

My name is William H. Shelmerdine; my age is 35 years; my occupation, stock broker, and my residence, Germantown.

I know the plaintiffs in this suit, Jonathan H. Pugh and Thomas
Hare, and I was a stockholder in the Fairmount Gold and
499 Silver Mining Company; I am a stockholder to-day; I hold
over 200 shares; I know that on the 20th of August, 1870,
the company created a bond and mortgage to secure the sum of seventeen thousand dollars; in that bond and mortgage Thomas Hare and Jonathan H. Pugh, the plaintiffs in this suit, were made trustees for the purposes named therein, that is to secure certain bondholders; at or about the time this bond and mortgage were made, certain bonds or certificates of indebtedness were issued by the company to certain persons for various amounts from ten dollars up to and over one thousand dollars, and I hold myself,—now hold one bond for over one thousand dollars.

For these certificates of indebtedness or bonds, the persons who took them paid cash therefor to the full amount to the treasurer of the company; they purchased these bonds outright, for the purpose of putting money into the treasury of the company; all the bonds that were issued were taken in that way; that is, cash was paid for them to the company.

About seventeen thousand dollars' worth of these bonds were issued in this way; that is, the people paid the cash for them into the treasury of the company.

After these bonds were issued to me and others, I and the others returned these bonds to the company, and took in lieu thereof stock of the company.

This was about three years after the bond and mortgage were
executed; about 1873.
500 After these bonds were given up, and stock taken there-
for, I held on to the stock, and hold it yet; I have not got my bonds back; the company still holds the bonds, and holds them in trust; I surrendered my bonds upon one condition, that all bondholders were to surrender their bonds within, I think, ten days from the passage of a certain resolution, and further, that all bondholders were to surrender their bonds and accept stock in lieu of the same.

I was a member of the board of directors at this time; this resolution was passed at a meeting of the board of directors, and not at a meeting of the stockholders.

This resolution of the board of directors was passed after the issuing of these bonds or certificates of indebtedness; this resolution was passed about three years after the issuing of the bonds or certificates of indebtedness; about 1876, as near as I can recollect, about the whole seventeen thousand dollars of these bonds or certificates of indebtedness which were secured by this mortgage, were issued, taken, and paid for, and afterwards all but about $3,500 were returned to the company, and stock taken therefor; these bonds not returned, were held by A. C. Brown, John W. Thackara, Samuel Nelson, M. Homiller, and others; at the time that I surrendered these bonds to the company, and took stock in

lieu thereof, I had no other agreement with the company than the one referred to, and no other minute appears on the books of the company to my recollection other than the one I referred to;
501 the resolution I referred to was passed at a meeting of the
board of directors; I think in 1876; I cannot say that no other resolution than the one I referred to was passed by the stockholders or board of directors; my bonds, or certificates of indebtedness are held by the company for me; then in fact, I have not only the stock issued by the company in lieu of the bonds, but I have the bonds also; that is, they are held in trust for me; no other resolution other than the one I referred to, was passed by the board of directors; not to my recollection in regard to these certificates of indebtedness being surrendered for stock; I have paid no new or other consideration for these bonds or certificates of indebtedness than the money I originally paid for them.

(S'g'd) WM. H. SHELMERDINE.

I, Adam Tindel, of the county of Philadelphia, and State of Pennsylvia, a commissioner duly appointed to take the deposition of the said William H. Shelmerdine, a witness, whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said William H. Shelmerdine, as a witness in the said suit between the said Thomas Hare and Jonathan H. Pugh, trustees, as complainants, and the Fairmount Gold and Silver Mining Company, as defendants, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said parties; that the said deposi-
502 tion was taken by me and reduced to writing by me, Adam
Tindel, at my office, No. 227 South Sixth street, in the city and county of Philadelphia, and State of Pennsylvania, on the ninth day of December, A. D. 1878, and that after said deposition was taken by me as aforesaid the same was read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, William H. Shelmerdine, before me, at the place and on the day and year last aforesaid.

(S'g'd) ADAM TINDEL, *Commissioner.*

Deposition of Thomas J. Clinger.

My name is Thomas J. Clinger; my age is 36 years; my residence is 2027 Woodstock street; my occupation, telegraph operator; I know the plaintiffs in this suit—Jonathan H. Pugh and Thomas Hare—and I know the defendant, the Fairmount Gold and Silver Mining Company; I am a stockholder in the Fairmount Gold and Silver Mining Company; I was secretary of the company from about 1868 to 1872; there was a bond and mortgage made on the 22d of August, 1870, to secure the sum of seventeen thousand dollars to Jonathan H. Pugh and Thomas Hare, as trustees, for the purposes therein named, and this purpose was to raise money for the company by means of bonds or certificates of indebtedness,

which had already been issued; those bonds or certificates of indebtedness being about the sum of seventeen thousand dollars; I believe that these bonds or certificates of indebtedness were
503 returned to the company in 1873, and stock taken therefor. I believe that a resolution in regard to surrendering the certificates and taking stock therefor was passed by the board of directors in 1873, or thereabouts; I did not take any of these bonds myself.

(S'g'd) THOMAS J. CLINGER.

I, Adam Tindel, of the county of Philadelphia, and State of Pennsylvania, a commissioner duly appointed to take the deposition of the said Thomas J. Clinger, a witness, whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Thomas J. Clinger as a witness in the said suit between the said Thomas Hare and Jonathan H. Pugh, trustees, as complainants, and the Fairmount Gold and Silver Mining Company, as defendants, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said parties, that the said deposition was taken by me and reduced to writing by me, Adam Tindel, at my office, No. 227 South Sixth street, in the city and county of Philadelphia, and State of Pennsylvania, on the ninth day of December, A. D. 1878, and that after said deposition was taken by me as aforesaid, the same was read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, Thomas J. Clinger, before me, at the place and on the day and year last aforesaid.

(S'g'd) ADAM TINDEL, *Commissioner.*

504 *Deposition of Jacob S. Fish.*

My name is Jacob S. Fish; my age is past 70 years; my occupation is a contractor; my residence is No. 1024 Melon street; I am a stockholder in the Fairmount Gold and Silver Mining Company, and have been since 1864, or 1865. I own a rising three hundred shares of stock; I know the plaintiffs, Jonathan H. Pugh and Thomas Hare, and the defendants, the Fairmount Gold and Silver Mining Company. About 22d of August, 1870, the company created a bond and mortgage for the sum of seventeen thousand dollars, and named therein as trustees Jonathan H. Pugh and Thomas Hare, Esq'rs, for the purpose therein named, and principally to secure the payment of bonds or certificates of indebtedness which had been issued by the company before the creation of the mortgage. These bonds, or certificates of indebtedness, amounted to about seventeen thousand dollars. I should mention that the mortgage was also intended to secure a bond of $66.66 held by John R. Rrownholtz, issued after the mortgage was created; about 1873 these bonds, or certificates of indebtedness, were returned or surrendered to the company, and stock of the company issued or given in place of these bonds to the holders thereof. I took of these bonds in the neighborhood of fifteen hundred dollars worth, and paid cash for

them before the mortgage was created. I surrendered these
505 bonds to the company about 1873, and took in place thereof stock of the company; this stock I hold to day—a part of it; a part of it I sold, but didn't get the money for it, hence I gave it away.

(S'g'd) J. S. FISH.

I, Adam Tindel, of the county of Philadelphia and State of Pennsylvania, a commissioner duly appointed to take the deposition of the said Jacob S. Fish, a witness, whose name [is] subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Jacob S. Fish, as witness in the said suit between the said Thomas Hare and and Jonathan H. Pugh, trustees, as complainants, and the Fairmount Gold and Silver Mining Company, as defendants, he was duly affirmed by me to testify the truth in relation to the matters in controversy between the said parties; that the said deposition was taken by me and reduced to writing by me, Adam Tindel, at my office, No. 227 South Sixth street, in the city and county of Philadelphia, and State of Pennsylvania, on the ninth day of December, A. D. 1878, and that after said deposition was taken by me, as aforesaid, the same was read over to the said witness, and that thereupon the same was signed and affirmed to by the said deponent, Jacob S. Fish, before me, at the place and on the day and year last aforesaid.

(S'g'd) ADAM TINDEL, *Commissioner.*

506 *Deposition of Thomas Hare.*

My name is Thomas Hare; my age is 62 years; my occupation is a tobacconist; my residence is 524 Franklin street; I am one of the plaintiffs in this suit; I knew Jonathan H. Pugh very well; I also know the Fairmount Gold and Silver Mining Company, defendants, and Swayne Thackara; I am a stockholder and a bondholder of the Fairmount Gold and Silver Mining Company; I purchased stock of the amount of about one thousand shares: I have been a stockholder in this company ten or eleven years. There was a bond and mortgage created by the Fairmount Gold and Silver Mining Company, on the 22d of August, 1870, for the sum of seventeen thousand dollars, to Jonathan H. Pugh and Thomas Hare, trustees, for the specific purpose of covering a like amount of money borrowed from various parties, and in fact bonds or certificates of indebtedness were issued to the parties who loaned the money to the company by the company to the amount of about seventeen thousand dollars. They then held these bonds or certificates secured by this mortgage. Subsequently a resolution was adopted by the board of directors for the purpose of converting said bonds into the stock of the company, and was carried, with a proviso, namely, that
507 all the holders should convert their bonds within ten days.

All these bonds or certificates of indebtedness were surrendered and stock taken in place thereof, except about three or four thousand dollars.

I surrendered my bonds to the company about 1873, and took in lieu thereof stock of the company. I surrendered nearly five thousand dollars of bonds and received therefor stock at its par value. I had owned previous to that some five or six hundred shares of stock. The stock that I took in lieu of the books I still hold; I mean that I own it. I turned these bonds over to the company and they are now technically in their possession, but in fact in the possession of our attorney in Colorado.

(S'g'd) THOMAS HARE.

I, Adam Tindel, of the county of Philadelphia, and State of Pennsylvania, a commissioner, duly appointed to take the deposition of the said Thomas Hare, a witness, whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Thomas Hare as a witness in the said suit between the said Thomas Hare and Jonathan H. Pugh, trustees, as complainants, and the Fairmount Gold and Silver Mining Company, as defendants, he was duly sworn by me to testify the truth in relation to the matters in controversy 508 between the said parties; that the said deposition was taken by me and reduced to writing by me, Adam Tindel, at my office, No. 227 South Sixth street, in the city and county of Philadelphia, and State of Pennsylvania, on the ninth day of December, A. D. 1878, and that after said deposition was taken by me as aforesaid, the same was read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, Thomas Hare, before me at the place and on the day and year last aforesaid.

(S'g'd) ADAM TINDEL,
Commissioner.

An adjournment was then had until Thursday, December 12th, 1878, at 2.30 o'clock p. m., at the office of the commissioner, No. 227 South Sixth street, Philadelphia.

(S'g'd) ADAM TINDEL,
Commissioner.

The deposition of Alfred Smith, of the county of Philadelphia, and State of Pennsylvania, a witness of lawful age, produced, sworn, and examined upon his corporal oath on the twelfth day of December, A. D. 1878, at the office of Adam Tindel, No. 227 509 South Sixth street, in the city and county of Philadelphia, and State aforesaid, by one Adam Tindel, commissioner, duly appointed by a *dedimus potestatum* issued out of the clerk's office of the circuit court of the United States for the district of Colorado, bearing teste in the name of the Chief Justice of the United States, and the seal of said court affixed thereto, and to me directed as such commissioner for the examination of the said Alfred Smith, a witness in a certain suit and matter in controversy now pending and undetermined in the said circuit court, wherein Thomas Hare and Jonathan H. Pugh, trustees, are complainants, and the Fairmount Gold and Silver Mining Company are defendants in behalf of the said defendants, orally, the said Alfred Smith being first duly sworn by me as a witness in the said cause previous to the commencement of this examination, to testify the truth as well on the part of the plaintiffs as the defendant, in relation to the matters in controversy between the said plaintiffs and defendant, testified and deposed as follows:

Deposition of Alfred Smith.

My name is Alfred Smith; my age is 38 years; my occupation is
that of a banker and broker; my residence, Germantown; I am a
stockholder in the Fairmount Gold and Silver Mining Company; I
hold about five or six hundred shares; I became a stock-
510 holder in September, 1871; I was a director in the company;
I was elected, in September, 1871, a director; I am secretary
of the company now, also a director; I have been a director ever since
September, 1871, and have been secretary since June, 1872; a por-
tion of the certificates of indebtedness or bonds of the Fairmount
Gold and Silver Mining Company were surrendered by the holders
thereof in February, 1873, and stock taken in lieu thereof under
the provisions of a re[solu]tion passed at a special meeting of the
board of directors, held February 8th, 1873; a copy of the resolu-
tion is attached, marked Exhibit A; I did not hold any of the bonds
issued by the company which this mortgage was intended to secure.
The object of the passage of the resolution was to liquidate a mort-
gage debt of $17,000, secured by bond and mortgage, dated August
22, 1870. There was about $11,400 worth of bonds surrendered
under and by virtue of the provisions of the resolution. The hold-
ers of the bonds not surrendered were Abram C. Brown, about
$1,800; Samuel Nelson, about $175; W. B. Wharton, about $100,
and others, making a total of about twenty-one hundred and forty
odd dollars. The balance of the $17,000 indebtedness, for which
the mortgage was created, amounted to about $3,200, and no certifi-
cates were issued to the parties for that indebtedness. The
511 company issued to John W. Thackara two certificates of in-
debtedness, one dated December 13, 1871, for $10,000, and
the other April 17, 1872, for $1,789.50, which were in settlement of
the back salary account of John W. Thackara, as general agent of
the company, and were to be paid when the company arrived at a
paying point. The certificates of indebtedness or bonds that were
surrendered under this resolution came into my possession, as secre-
tary of the company, and they remained in my possession until they
were demanded from the company by the trustees, sometime during
the year 1875. They were handed over to the trustees, and a receipt
taken therefor. I have not the receipt with me. By direction of

the president of the company they were handed over to the trustees. The president directed me to hand them over to the trustees at their request, on his own responsibility, without any order of the board of directors or of the stockholders.

I have no recollection of any bondholder who exchanged his bonds for the stock of the company under the resolution ever dedemanding of me a return of his bonds and tendering his stock that he had received in lieu of the bonds. When I say to me, I mean in my official capacity as secretary of the company. So far as I know, I have no recollection of any such demand being made upon the company.

The last I know of these bonds they were in the possession of the trustees. The back-salary bonds referred to, amounting to
512 $11,789.50, were issued to John W. Thackara subsequent to the bond and mortgage, and were not intended to be secured by it.

(S'g'd) ALF'D SMITH.

I, Adam Tindel, of the county of Philadelphia and State of Pennsylvania, a commissioner duly appointed to take the deposition of the said Alfred Smith, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Alfred Smith as a witness in the said suit between the said Thomas Hare and Jonathan H. Pugh, trustees, as complainants, and the Fairmount Gold and Silver Mining Company as defendants, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said parties; that the said deposition was taken by me, Adam Tindel, at my office, No. 227 South Sixth street, in the city and county of Philadelphia and State of Pennsylvania, on the twelfth day of December, A. D. 1878, and that after said deposition was taken by me as aforesaid, the same was read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, Alfred Smith, before me at the place and on the day and year last aforesaid.

(S'g'd) ADAM TINDEL,
Commissioner.

513 An adjournment was then had until Thursday, December 12th, 1878, at 2.30 o'clock p. m., at same place.

(S'g'd) ADAM TINDEL,
Commissioner.

The deposition of Jonathan H. Pugh, of the county of Philadelphia, and State of Pennsylvania, a witness of lawful age, produced, sworn, and examined upon his corporal oath on the nineteenth day of December, A. D. 1878, at the office of Adam Tindel, No. 227 South Sixth street, in the city and county of Philadelphia and State aforesaid, by me, Adam Tindel, commissioner duly appointed by a *dedimus potestatum*, issued out of the clerk's office of the circuit court of the United States for the district of Colorado, bearing *teste* in the name of the Chief Justice of the United States, and the seal of said court affixed thereto, and to me directed as such commissioner for the examination of the said Jonathan H. Pugh, a witness in a certain suit and matter in controversy now pending and undetermined in the said circuit court wherein Thomas Hare and Jonathan H. Pugh, trustees, are complainants, and the Fairmount Gold and Silver Mining Company are defendants, in behalf of the said defendants; orally the said Jonathan H. Pugh being first duly sworn by me as a witness in the said cause previous to the commencement of his examination to testify the truth, as well on the part of the 514 plaintiff, as the defendant in relation to the matters in controversy between the said plaintiffs, and defendant testified and deposed as follows:

Deposition of Jonathan H. Pugh.

My name is Jonathan H. Pugh; my age is near 57 years; my residence is No. 1345 North Twelfth street; my occupation is gentleman. I am one of the plaintiffs in this suit. I know the other plaintiff, Thomas Hare, and the defendants, The Fairmount Gold and Silver Mining Company and Swayne Thackara. I am a director and the vice-president of the Fairmount Gold and Silver Mining Company. I have been a member of the board of directors since 1868, or along there. I became a stockholder about 1868. I might have had bordering on one hundred shares of stock at that time. I can't tell how many shares I have at the present time—five or six hundred shares or thereabouts. I know there was a mortgage created by the Fairmount Gold and Silver Mining Company on the 22d of August, 1870, for $17,000. I was one of the trustees named in that mortgage. The object of tho creation of that mortgage was to secure pre-existing indebtedness of the company for money loaned to the company to develop its works. For that money loaned certificates of indebtedness or bonds were issued by the company. These certificates of indebtedness amounted, I think, to quite seventeen thousand dollars. On February 8th, 1873, there was a resolution passed by the board of directors, a copy of which I am now shown, and which is marked "Exhibit 515 "A" by the commissioner, and this resolution was passed by the board. These certificates of indebtedness were returned to the company and exchanged for stock of the said company conditionally in accordance with the terms of that resolution. I was a holder of certificates—some of them—and I returned mine to the company conditionally, and took stock in place thereof, shortly after 1873, with the understanding that I was to have them back whenever I saw fit to demand them. I had eleven or twelve hundred dollars' worth of these certificates—I think it was $1,299.99—and I took stock at the par value in lieu thereof. I have that stock yet. The certificates of indebtedness when returned to the company I presume were in the possession of the secretary or treasurer of the company. They

got out of the possession of the secretary or treasurer when I and the other trustee made a demand for them on the president of the company for the purposes of this suit. This was about three years ago—I think in 1875. I don't know that I ever made formal demand for my own individual bonds, not regarding it as necessary, for I calculated to make demand for the whole of them for this suit. That calculation began in my mind as soon as I ascertained that the terms of this resolution were not complied with. I could not state when this calculation to demand my bonds came into my mind, but it was after the failure of the object of the resolu-
516 tion. I can't say that I had any particular understanding with anybody that my bonds were to be returned, or any understanding outside of the resolution. I understood the resolution, and upon that I surrendered. I was a member of the board of directors when that resolution was framed. I did not draw it up. Although a member of the board of directors which framed this resolution, I did not incorporate in it anything in regard to the return of the bonds to me and a surrender of the stock, because I knew the resolution spoke for itself—that I would get my bonds back by reason of the resolution not being complied with, of course upon the surrender of my stock. I have not yet surrendered my stock, but expect to. I have, as trustee, the bonds. I felt it my duty, as one of the trustees, which was concurred in by Mr. Hare and my colleague, to proceed to collect this mortgage, by reason of press and demands made upon us by bondholders. The bondholders who made a demand upon me were Mr. Wharton, Mr. Nelson, Mr. Hare, Mr. Fish, and others whom I don't remember. I think most likely that Mr. Hare and Mr. Fish had surrendered their bonds and taken stock in lieu thereof, just as I have. I have no knowledge of what amount of bonds Mr. Nelson and Mr. Wharton held; it might be $800, it might be $300; I wouldn't like to say that it is less than $300.

(S'g'd) J. H. PUGH.

I, Adam Tindel, of the county of Philadelphia and State of
517 Pennsylvania, a commissioner duly appointed to take the deposition of the said Jonathan H. Pugh, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the examination of the said Jonathan H. Pugh as a witness in the said suit between the said Thomas Hare and Jonathan H. Pugh, trustees, as complainants, and the Fairmount Gold and Silver Mining Company as defendants, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said parties; that the said deposition was taken by me, Adam Tindel, at my office, No. 227 South Sixth street, in the city and county of Philadelphia, and State of Pennsylvania, on the nineteenth day of December, A. D. 1878, and that after said deposition was taken by me as aforesaid, the same was read over to the said witness, and that thereupon the same was signed and sworn to by the

said deponent, Jonathan H. Pugh, before me, at the place and on the day and year last aforesaid.

(S'g'd) ADAM TINDEL,
Commissioner.

Mr. Russell, of counsel for plaintiff, offers Jacob S. Fish, a witness examined before the commissioner on the part of defendants, on Dec. 9, 1878, to correct his testimony given at that date for the defendants in certain material points of such evidence; the witness, Jacob S. Fish, is now here and desires to do that which is indicated in the offer.

518 Mr. Ashton, of counsel for defendants, objects, because Mr. Fish was a witness called for the defendants, his testimony taken down by the commissioner, read over to him when it was finished, signed by him in the presence of the commissioner, and he left the office of the commissioner, and this correction was asked for at a subsequent day, the next morning.

The commissioner having read the deposition to the witness twice carefully, and the witness assenting to it, and swearing to it as being correct, and no application having been made for correction at the time, the application for a re-opening of the deposition is refused.

(S'g'd) ADAM TINDEL,
Commissioner.

EXHIBIT "A."

"Resolved, That the board of directors authorize the conversion of certain outstanding and unpaid certificates of indebtedness of the Fairmount Gold and Silver Mining Company, being numbered from 1 to 87, both numbers inclusive, and No. 89 to 100, both numbers inclusive, into the stock of the said company at the par value thereof, upon the surrender of the said certificates of indebtedness by the holders thereof, provided that the holders of said certificates of indebtedness convert the same into stock of the said company at the par value thereof within ten days from the date of the passage of this resolution, and all the holders convert."

519 "*Resolved*, That the secretary of the Fairmount Gold and Silver Mining Company be authorized to adjust all differences between the holders of said certificates of indebtedness and the Fairmount Gold and Silver Mining Company at the time of the surrender thereof, the said adjustment shall be made in cash."

(S'g'd) ADAM TINDEL,
Commissioner.

Endorsed: No. 124. U. S. circuit court, district of Colorado. Thomas Hare and Jonathan H. Pugh *vs.* The Fairmount Gold and Silver Mining Company. Depositions taken on the part of the defendants. Opened, published, and filed Jan. 28, 1879. S'g'd Edward F. Bishop, clerk. Fee, $25; paid by deft's. Adam Tindel, commissioner.

And afterwards and on, to wit, the 24th day of February, A. D. 1879, came again the said complainants, by their solicitor, J. Q. A. King, Esq., and filed in said court and in said cause notice of motion to submit case and set down for trial.

And the said motion is in words and figures as follows, to wit:

United States Circuit Court, District of Colorado.

520 THOMAS HARE AND JONATHAN H. PUGH, Trustees. Plaintiff,
vs. } Notice.
THE FAIRMOUNT GOLD AND SILVER MINING CO., G. B. REED, *et als.*, Defendants.

The defendants and G. B. Reed, attorney of record for defendants, are notified that we will make a motion before Hon. Moses Hallett, judge of the United States circuit court for the district of Colorado, to submit the case above named and set down for trial before said court, and which motion will be made on the 3d day of March, 1879, at Denver, Colorado, when said court again convenes, when and where you can attend.

Feb'y 20th, 1879.
(S'g'd) THOMAS HARE AND
JONATHAN H. PUGH,
Trustees.
By JOHN Q. A. KING, *Att'y.*

Endorsed: United States of America, district of Colorado, *ss.* Denver, Colo., Feb'y 21, 1879. I have served the within by delivering to G. B. Reed, attorney, a true copy at Denver, county of Arapahoe, district of Colorado, this 21st day of February, A. D. 1879. S'g'd P. P. Wilcox, U. S. marshal, district of Colorado.
Marshal's fees: Services, $1.00 paid. John Q. A. King.

521 Endorsed: 124. Circuit court U. S. Hare and Pugh, trustees, *vs.* The Fairmount Gold and Silver Mining Company *et als.* Notice by comp'lt of motion to submit case. Filed Feb. 24, 1879. Sgd. Edward F. Bishop, clerk. Jno. Q. A. King, att'y.

And afterwards and on, to wit, the 3d day of March, A. D. 1879, the same being one of the regular juridical days of the December term, A. D. 1878, of said court—present, the Hon. Moses Hallett, district judge, the following proceeding was had and entered of record in said court and in said cause, to wit:

Order to Open Depositions.

THOMAS HARE *et al.* Trustees, &c.,
vs. } In Chancery; for an account, &c.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*

At this day come the said complainants, by J. Q. A. King, Esq., their solicitor, and the said defendants, by G. B. Reed, Fsq., their solicitor, also come.

And thereupon [on] motion of the said complainants, it is 522 ordered that depositions in this cause, now in the office of the clerk, be opened, published, and filed as of this day.

And afterwards and on, to wit, the 3d day of March, A. D. 1879, there was opened, published, and filed in said court and in said cause, deposition of Jacob S. Fish, taken on behalf of the said complainants, and the said deposition is in words and figures as follows, to wit:

Depositions behalf of Complainants.

United States Circuit Court, District of Colorado.

THOMAS HARE and JONATHAN H. PUGH, Trustees, Complainants,
vs.
THE FAIRMOUNT GOLD and SILVER MINING COMPANY, and G. B. REED, *et al.*, Defendants.

Deposition of Jacob S. Fish, of the county of Philadelphia, and State of Pennsylvania, a witness of lawful age, produced, sworn, and examined upon his corporal oath on the eleventh day of February, A. D. 1879, at the office of Charles P. Clarke, commissioner, No. 501 Chestnut street, room No. 3, second story, in the city of Phila- 523 delphia, in the county of Philadelphia and State aforesaid, by me, Charles P. Clarke, a commissioner duly appointed by a *dedimus potestatum* issued out of the clerk's office of the circuit court of the United States for the district of Colorado, bearing *teste* in the name of the Chief Justice of the United States, and the seal of said court affixed thereto, and to me directed as such commissioner for the examination of the said Jacob S. Fish, a witness in a certain suit and matter in controversy now pending and undetermined in the said circuit court, wherein Thomas Hare and Jonathan H. Pugh, trustees, are plaintiffs, and the Fairmount Gold and Silver Mining Company and G. B. Reed *et al.*, are defendants, in behalf of the said plaintiffs, as well on the cross-interrogatories of the defendants as upon the interrogatories of the plaintiffs, which were attached to the said commission, and upon none others, and the said Jacob S. Fish, being first duly sworn by me, C. P. Clarke, the said commissioner, as a witness in the said cause, previous to the commencement of his examination, to testify to the truth as well on the part of the plaintiffs as the defendants, in relation to the matters in controversy between the said plaintiffs and defendants, so far as he shall be interrogated, testified and deposed as follows:

Interrogatory 1st. In your deposition, taken before Adam Tindell, commissioner, in Philadelphia, Pennsylvania, on the 9th 524 December, 1878, in behalf of the defendants, you say, "about 1873 these bonds or certificates of indebtedness were returned or surrendered to the company, and stock of the company issued or given in place of these bonds to the holders thereof; I took of these bonds, in the neighborhood of fifteen hundred dollars' worth, and paid cash for them before the mortgage was created; I surrendered these bonds to the company about 1873, and took in place thereof stock of the company; this stock I hold to day, a part of it *a part of it* I sold, but did not get the money for it, hence I gave it away;" you will please be more explicit and state what you mean by using the words, "these bonds" or "certificates," and say whether or not the bonds or notes or certificates of indebtedness, on which this suit is *brought* on your behalf, were ever paid in whole or in part in any stock or anything else; if so, when, how, and by whom.

Answer. What I mean by using the word, "these bonds or cercertificates" is, that they are bonds which were given to me by the Fairmount Gold and Silver Mining Company at various dates for money which I loaned to the company, and which bonds were secured by a certain mortgage given by the company to Thomas Hare and Jonathan H. Pugh, trustees; I now hand to the commissioner a paper which explains fully my claim upon the com-
525 pany for money which I loaned to the company; it describes the condition of my claim, and shows the indebtedness of the company to me, and it is marked "Exhibit A, C. P. C., Commissioner," and also with my initials. These bonds or notes or certificates of indebtedness are the bonds which I owe and which form part of the foundation of the suit of Thomas Hare and Jonathan H. Pugh, trustees, against the company, and these bonds were never paid in whole or in part by any one. And I further answer, upon the eleventh day of February, 1873, I converted these bonds or debts of the company due to me, and which were secured by the mortgage, into stock of the company, under a resolution of the board of directors of the date of Febr'y 8th, 1873, and a copy of which I now hand to the commissioner, and it is marked by him "Exhibit B, C. P. C., Commissioner," and also with my initials. This paper has the seal of the company attached. This conversion was done under the provisions and conditions of the resolution of the board of directors, which I well knew at the time of the conversion, and which provisions and conditions are that the conversion is to be binding only in the event that all the holders of bonds secured by the mortgage convert them into stock of the company, and that the conversion of all stock take place in ten days from the date of the resolution. I never sold any part of the stock which I received in exchange for my bonds. The stock which I refer to in my
526 deposition before Mr. Tindell as having been sold by me was stock which I owed long before the conversion of my bonds into stock under the resolution.

Cross-interrogatories and answers thereto by the witness, JACOB S. FISH, on the part of the defendant:

Cross interrogatory 1. If you say you surrendered certain bonds of the Fairmount Gold and Silver Mining Company, and took in place thereof stock of said company, give the exact date of such transaction, the amount and par value of the bonds surrendered, to whom surrendered, the number of shares of stock you received, the number of certificates of stock you received, the number of shares of stock for which cash certificates of stock was respectively issued, the dates of each such certificates, and the number of each of such certificates.

Answer. The date of the conversion is Feb'y 11, 1873, and I have handed to the commissioner, in my answer to direct interrogatory, a paper which shows the dates of the several loans of money that I made to the company, [and] the par value of each of the bonds I received for the loans so made. I surrendered these bonds to the company under the condition that the conversion of them into stock was not to be binding unless all holders of
527 bonds convert, and at the time of the conversion of my bonds
I received therefor a certificate of stock, number 379, for one hundred and forty-eight shares of the capital stock of the company, and the date of the certificate is Feb. 11, 1873.

Cross-interrogatory 2d. State whether you now have in your possession, or under your control, these identical certificates of stock, and if not, what disposition you have made of each, to whom sold, if sold, and when sold, and for what amounts they were sold respectively.

Answer. I have now in my possession, and under my control, the identical certificate of stock, and have never sold any part of the stock represented by the certificate.

Cross-interrogatory 3. If you say you now hold the same stock that was issued to you in place of the bonds, state whether you have had it continually, and all of it, from the time the exchange was made to the present time; and if not, how, when, and under what circumstances you regained possession of it.

Answer. I now hold the stock that was issued to me at the time of the conversion or exchange of my bonds, and I have held it continually, and all of it, from the time of conversion or exchange, up to the present time; I now hand to the commissioner the certificate of stock which I received from the company at the time of the conversion or exchange, and it is marked by him "Ex-
528 hibit C, C. P. C., Commissioner," and with my initials.

Cross-interrogatory 4th. If, in answer to the direct interrogatory, you say these bonds which you surrendered are still due and unpaid, state when you regained possession of them, if ever; how you got them, and when, and if you have never regained possession of them, state in whose possession they remained, and whom you notified of your intention to reclaim them; in what manner such notice was given, and when such notice was given.

Answer. On the 11th day of Feb'y, 1873, I converted my bonds which were secured by the mortgage, and left the bonds in custody of the company; I found very soon thereafter that all the holders of bonds secured by the mortgage did not convert their bonds into stock, and I demanded my bonds from the president of the company, and he directed the secretary in my presence to deliver them to me; the trustees, Thomas Hare and Jonathan H. Pugh, obtaining possession of them from the secretary of the company, at my request, and for the purpose of collecting the same, and I directed the trustees to take such proceeding at law as would secure such a result; the time of making the demand for my bonds upon the president was some time early in the summer of 1873, and it was made upon him by myself in person, at the office of the Fairmount Gold and Silver Mining Company; I do not know the exact 529 date the trustees obtained possession of my bonds from the company, but I do know that it was between the time of my demand for them and the time of the commencement of the proceedings by the trustees to collect my bonds.

(S'g'd) J. S. FISH.

Sworn to and subscribed before me, this eleventh day of February, A. D. 1879.

(S'g'd) CHAS. P. CLARKE,
Commissioner.

UNITED STATES OF AMERICA, }
Eastern District of Penna., } *ss:*

I, Charles P. Clarke, of the county of Philadelphia and State of Pennsylvania, a commissioner duly appointed to take the deposition of the said Jacob S. Fish, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Jacob S. Fish, as a witness in the said suit between the said Thomas Hare and Jonathan H. Pugh, trustees, as plaintiffs, and the Fairmount Gold and Silver Mining Company and G. B. Reed *et al.*, as defendants, he was duly sworn by me, C. P. Clarke, the said commissioner, to testify the truth in relation to the matters in controversy between the said parties, so far as he should be interrogated concerning the same; that the said deposition was taken by C. P. Clarke, and re- 530 duced to writing by G. R. Jefferson, at my office, No. 501 Chestnut street, room No. 3, second story, in the city of Philadelphia, in the county of Philadelphia and State of Pennsylvania, on the eleventh day of February, A. D. 1879; and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto as written down were read over to the said witness, and that thereupon the same was signed and sworn to by the said Jacob S. Fish, deponent, before me, at the place and on the day and year last aforesaid.

[SEAL.] (S'g'd) CHAS. P. CLARKE,
U. S. Commissioner.

EXHIBIT "A."—C. P. C., *Commissioner*.

Loans made by Jacob S. Fish to the Fairmount Gold and Silver Mining Company, as appears upon the books of the Company.

Loan,	Aug't 5th, 1868,	for	$100 00
"	" " "	"	333 33
"	Feb. 24th, 1870,	"	368 40
"	May 19th, "	"	452 50
			$1,254 23

531 Bond No. 4, issued by company for loan of $100.00, of date Aug. 5, 1868.

Bond No. 33, issued by company for loan $333.33, of date Aug. 5, 1868.

Bond No. 66, issued by company for loan $368.40, of date Feb. 24, 1870.

The company issued no bond for the loan $452 50, of date May 19, 1870.

J. S. F.

EXHIBIT B.—C. P. C., *Commissioner*.

Extract from the minutes of the special meeting of the board of directors of the Fairmount Gold and Silver Mining Company held at Philadelphia Feb. 8th, 1873.

Resolved, that the board of directors authorize the conversion of certain outstanding and unpaid certificates of indebtedness of the Fairmount Gold and Silver Mining Company, being numbered from 1 to 87, both numbers inclusive, and No. 89 to 100, both numbers inclusive, into the stock of the said company at the par value thereof, upon the surrender of the said certificates of indebtedness by the holders thereof; provided, that the holders of the said
532 certificates of indebtedness converted the same into stock of the said company at the par value thereof within ten days from the date of the passage of this resolution, and all the holders convert.

Extract from the minutes.

[SEAL.] S'g'd ALF'D SMITH, *Secretary*.

EXHIBIT "C."—C. P. C., *Commissioner*. S'g'd J. S. F.

Capital, $200,000, Shares, $10 each.

Fairmount Gold and Silver Mining Co.

Number 397. Shares, 148.

This certifies that Jacob S. Fish is entitled to one hundred and forty-eight shares in the capital stock of the Fairmount Gold and Silver Mining Company, transferable only on the books of the said company in person or by attorney upon surrender of this certificate.

In witness whereof, we have hereunto set our hands and affixed the seal of the company, at Philadelphia, Pa., this eleventh day of February, A. D. 1873.

[SEAL.] S'g'd JOHN RUSSELL, *Pres't.*
S'g'd WM. SHELMERDINE, *Treas.*

Incorporated 1866.

Countersigned :
ALF'D SMITH, *Sec'y.*

533 Circuit Court of the United States, Eastern district of Pennsylvania.

It is hereby certified that Charles P. Clarke, on the eleventh day of February, A. D. 1879, was, and now is, a commissioner of the circuit court of the United States for the third circuit and eastern district of Pennsylvania, duly commissioned and acting as such, and that full faith and credit are due to his actions as such.

In testimony whereof, I, Samuel Bell, clerk of the United States circuit court for the eastern district of Pennsylvania, have hereunto subscribed my name and affixed the seal of said court, at office, this 12th day of February, A. D. 1879.

(S'g'd) SAMUEL BELL,
Clerk Cir. Ct. U. S., E. D. of Pa.

United States Circuit Court, District of Colorado.

THOMAS HARE and JONATHAN H. PUGH, Trustees, Complainants,
vs.
534 THE FAIRMOUNT GOLD AND SILVER MINING COMPANY and G. B. REED *et als.*, Defendants.

G. B. Reed, Esq., attorney of record for deponents in the above-entitled cause :

You are notified that we will attend at the office of Charles P. Clarke, commissioner, No. 501 Chestnut street, room No. 3, second story, in the city of Philadelphia, Penn., on the 11th day of February, 1879, to take the deposition of Jacob S. Fish, on interrogatories, a copy of which interrogatories are now herewith handed to you, and which deposition is to be read in our favor in the above court, and in the foregoing suit, and is taken under an order or leave of court, this day made and had, when and where you may, &c.

Jan'y 28th, 1879.

(S'g'd) THOS. HARE AND
JONATHAN H. PUGH,
Trustees.
By JOHN Q. A. KING, *Att'y.*

UNITED STATES OF AMERICA,
District of Colorado, } *ss* :

DENVER, COLO., *Jan'y 28th*, 1879.

I hereby certify that I have served copy of the within notice on G. B. Reed, at Denver, Colorado, this 28th day of January, A. D. 1879.

535 No president, vice-president, treasurer, or secretary of the Fairmount Gold and Silver Mining Company found in my district.

(S'g'd) P. P. WILCOX,
U. S. Marshal.

Marshal's fees: Serving, $1.00. Paid by John Q. A. King.

Endorsed: No. 124. Circuit court U. S. Thos. Hare and Jonathan H. Pugh, trustees, *vs.* Fairmount Gold and Silver Mining Company *et als.* Notice of interrogatories to Jacob S. Fish. Filed Jan. 29, 1879. S'g'd Edward F. Bishop, clerk. John Q. A. King, att'y.

UNITED STATES CIRCUIT COURT, *District of Colorado*:

THOMAS HARE and JONATHAN H. PUGH, Trustees, &c., Complainants,
vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY, and G. B. REED, *et als.*, Defendants.

536 The witness, Jacob S. Fish, will, in his deposition to be taken on interrogatories before me, Charles P. Clarke, commissioner, in the city of Philadelphia, Penn., in the foregoing case and court, answer the following interrogatories, to wit:

Question 1. In your deposition taken before Adam Tindall, commissioner, in Philadelphia, Penn., on the 9th December, 1878, in behalf of defendants, you say "about 1873 these bonds or certificates of indebtedness were returned or surrendered to the company, and stock of the company issued or given in place of these bonds to the holders thereof; I took of these bonds in the neighborhood of fifteen hundred dollars' worth, and paid cash for them before the mortgage was created; I surrendered these bonds to the company about 1873, and took in place thereof stock of the company; this stock I hold to-day, a part of it, a part of it I sold, but didn't get the money for it; hence I gave it away." You will please be more explicit, and state what you mean by using the words "these bonds" or "certificates," and say whether or not the bonds or notes or certificates of indebtedness, on which this suit is brought on your behalf, were ever paid, in whole or in part, in any stock or anything else; if so, when, how, and by whom?

THOMAS HARE AND
(S'g'd) JONATHAN H. PUGH, *Trustees, &c.*
By JOHN Q. A. KING, *Att'y.*

Jan'y 29, 1879.

537 Endorsed: No. 124. Circuit court U. S. Hare and Pugh, trustees, *vs.* Fairmount Gold and Silver Mining Co. *et als.* Interrogatory to Jacob S. Fish. Filed Jan. 29, 1879. S'g'd Edward F. Bishop, clerk. John Q. A. King, attorney.

Cross-interrogatories to be propounded to JACOB S. FISH, on the part of defendants:

Interrogatory 1. If you say you surrendered certain bonds of the Fairmount Gold and Silver Mining Company, and took in place thereof stock of said company, give the exact date of such transaction, the amount and par value of the bonds surrendered, to whom surrendered, the number of shares of stock you received, the number of certificates of stock you received, the number of shares of stock for which each certificate of stock was respectively issued, the date of each of such certificates, and the number of each of such certificates.

Int. 2. State whether you now have in your possession, or under your control, these identical certificates of stock; and, if not, what disposition you have made of each, to whom sold, if sold, and when sold, and for what amounts they were sold, respectively.

538 Int. 3d. If you say you now hold the same stock that was issued to you in place of the bonds, state whether you have had it continually, and all of it, from the time the exchange was made to the present time; and, if not, how, when, and under what circumstances you regained possession of it.

Int. 4th. If, in answer to the direct interrogatory, you say these bonds which you surrendered are still due and unpaid, state when you regained possession of them, if ever, how you got them, and when, and if you have never regained possession of them, state in whose possession they remained, and whom you notified of your intention to reclaim them, in what manner such notice was given, and when such notice was given.

(S'g'd) G. B. REED,
Sol'r for Def'ts.

Endorsed: 124. Circuit court U. S. Thos. Hare and Jonathan H. Pugh *vs.* Fairmount Gold and Silver Mining Co. Cross-interrogatories to Jacob S. Fish. Filed Jan. 30, 1879. S'g'd Edward F. Bishop, clerk. G. B. Reed, sol. for def'ts.

539 *Dedimus Potestatum.*

The United States of America.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

The President of the United States of America, to Charles P. Clarke, Esq., a commissioner residing at Philadelphia, in the county of and State of *Phila.*, Greeting:

Whereas it has been represented that Jacob S. Fish is a material witness in a certain cause now pending in the circuit court of the United States for the district of Colorado, wherein Thomas Hare and Jonathan H. Pugh, trustees, &c., are plaintiffs, and The Fairmount Gold and Silver Mining Company *et al.*, are defendants, and that the said witness resides at Philadelphia aforesaid, without the said district of Colorado, and that his personal attendance cannot be procured at the trial of the said cause.

Now, know ye, that in confidence of your prudence and fidelity, you have been appointed and by these presents you are invested with full power and authority as commissioner to examine the said witness; and you are therefore authorized and required to cause the said witness to come before you at such times and place as you may therefor designate and appoint, and diligently to examine the said witness on the oath or affirmation of the said witness by you first duly in that behalf administered, and faithfully to take the deposition of the said witness upon all interrogatories and 540 cross-interrogatories attached to these present on the part of the said complainants and none other; and the same, when thus taken, together with this commission and the said interrogatories, to certify into our said district court in a sealed envelope, *with the least possible delay.*

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in the district aforesaid, this 31st day of January, A. D. 1879, and of the Independence of the United States the 103d year.

[SEAL.] (Sgd.) EDWARD F. BISHOP, *Clerk.*

Fees before Commissioner.

Deposition, postage, &c	$8 50
Certificate, clerk U. S. C. C.	1 00
	$9 50

Paid by Thos. Hare and J. H. Pugh, trustees.

Endorsed: No. 124. Deposition of Jacob S. Fish taken on behalf of compl't. Opened, published, and filed March 3d, 1879. Sgd. Edward F. Bishop, clerk. By F. W. Tupper, dep'ty.

541 And afterwards and on, to wit, the 12th day of May, A. D. 1879, there was filed in said court and in said cause a certain affidavit of John Q. A. King, and the said affidavit is in words and figures, as follows, to wit:

Affidavit of King as to Death of Hare, &c.

UNITED STATES CIRCUIT COURT, } *ss:*
District of Colorado, }

JONATHAN H. PUGH and THOMAS HARE, Trustees, Complainants,
vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY, G. B. REED, *et als.*, Defendants.
} Affidavit.

Affiant, John Q. A. King, says he is attorney for Jonathan H. Pugh and Thomas Hare, trustees, in the above suit against the Fairmount Gold and Silver Mining Company *et als.*, pending in the above-named court; that he is informed by letter from complainant, Jonathan H. Pugh, herewith filed, marked A, dated April 26, 1879; that his co-complainant and trustee, Thomas Hare, has died since the last term of this court, intestate, in the State of Pennsylvania, and affiant asks that his death be suggested and an order 542 made that the suit proceed in the name of the survivor, Jonathan H. Pugh.

(S'g'd) JOHN Q. A. KING.

Subscribed and sworn to before me, by John Q. A. King, this 12 May, 1879.

[SEAL.] (S'g'd) EDWARD F. BISHOP,
Clerk Cir't C't U. S.

Endorsed: No. 124. Circuit court. Hare and Pugh, trustees, *vs.* The Fairmount Gold and Silver Mining Co. *et als.* Affidavits as to death of Hare. Filed May 12, 1879. S'g'd Edward F. Bishop, clerk.

"A."

PHILADELPHIA, *April* 26, 1879.

JOHN Q. A. KING, Esq., *Denver Colorado.*

DEAR SIR: Your favors of the 20th and 22d inst. duly received. In answer to your inquiries, would say:

1st. Mr. Hare died on the 6th day April, 1870.

2d. He has no executor, having died intestate.

3d. His wife, Matilda Hare, has applied for letters of ad- 543 ministration, and of course they will be granted her, as our intestate laws so direct.

I have this day caused to be written a letter to the Honorable Judge Steck, a copy of which I enclose.

Hope the same will be satisfactory. If you desire anything further let me know.

Florence Hare is a minor, the others of full age.

Yours, truly,

(S'g'd) J. H. PUGH, *Trustee.*

Order.—Action to Proceed in Name of Surviving Trustee.

And afterwards and on, to wit, the 12th day of May, A. D. 1879, the same being one of the regular juridical days of the May term, A. D. 1879, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court, and in said cause, to wit:

THOMAS HARE *et al.*, Trustees, &c.,
vs.
FAIRMOUNT GOLD AND SILVER MINING CO. *et al.*
} In Chancery. For an Account, &c.

At this day comes J. Q. A. King, Esq., solicitor of the said complainants, and suggests to the court here, that since the last term of the court the said complainant, Thomas Hare, hath departed this life.

544 And thereupon it is ordered that this said action proceed in the name of the surviving complainant.

545 And afterwards and on, to wit, the 19th day of July, A. D. 1879, came the said complainants, by J. Q. A. King, Esq., their attorney, and filed in said court and in said cause their brief. And said brief is in words and figures, as follows, to wit:

Brief of Complainant.

In the United States Circuit Court, District of Colorado.

THOMAS HARE and JONATHAN H. PUGH, Trustees in Trust, etc.,
Complainants,
against
FAIRMOUNT GOLD AND SILVER MINING COMPANY and G. B. REED *et al.*,
Defendants.

Complainants' Brief.

This suit in equity was brought by Thomas Hare and Jonathan H. Pugh, trustees in trust, etc., for the various creditors of the Fairmount Gold and Silver Mining Company, incorporated by a special and local law of the State of Pennsylvania, approved 1st day of May, 1866, and the suit was instituted in the district court of Clear Creek county, and Territory of Colorado, and alleges that said non-resident corporation on the 22d day of August, 1870, being then
546 indebted to divers and sundry persons in the sum of seventeen thousand dollars, and being desirous to secure them, executed and delivered the bond of said company, with the consent and approval of said creditors, to complainants, Thomas Hare and Jonathan H. Pugh, trustees in trust for said creditors, in the sum of $34,000, conditioned to be void upon payment of $17,000, with interest at six per cent. from date, bond to mature within one year from date; and to secure said and said creditors, on the same day and at the same time said company executed, acknowledged, and delivered to said trustees in trust, as aforesaid, a deed of mortgage on the following property, to wit:

"All that certain mill, mill site, steam engines and machinery in said mill, and all the appurtenances thereunto belonging, and the following real estate, mines, or lodes, to wit: fifteen hundred feet on the Fairmount lode, fifteen hundred feet on the Goodenough lode, eight hundred feet on the Thackara lode, eight hundred feet on the Hensen lode, eight hundred feet on the Gen. Moorehead lode, eight hundred feet on Robert Steel lode, together with all the real estate and appurtenances thereunto, or in anywise appertaining or belonging, situate in or adjoining to Haskell Gulch, Spanish Bar District, Clear Creek county, Colorado Territory, together with all and singular the buildings, ways, waters, water courses, rights, liberties, privileges, improvements, hereditaments,
and appurtenances whatsoever thereunto belonging, or in
547 anywise appertaining, and the reversion, remainder, rents,
issues, and profits thereof."

Which mortgage was duly recorded on 30th August, 1870, in the Clear Creek county, Colorado, recorder's office, in Book 11, pages 17, 18, 19, and 20, of Mortgages.

By consent of parties, and in accordance with the act of Congress, the suit was removed from the Clear Creek district court to the circuit court of the United States for the district of Colorado. After its removal to this court the defendant, G. B. Reed, who is the only defendant in interest, and who claims to be the owner of all the property named in the mortgage, filed his answer in the case, in which he distinctly admits the execution and delivery of the $17,000 bond aforesaid, on 22d August, 1870, and the mortgage to secure the same, on same date; and that said mortgage was duly recorded in the county where the property is situated. That he bought of J. W. Thackara, and Thackara bought at sheriff's sale, under execution and attachment at law, of said Thackara against the Fairmount Gold and Silver Mining Company; and that it was the same property mortgaged by the said company to Hare and Pugh, trustees, to secure certain creditors of the company, Thackara being one of them. But alleges, by way of *avoidance*, that said Fairmount Gold and Silver Mining Company was
not indebted to the amount of $17,000. Now, that being
548 the *first issue* made by the pleadings, let us examine the facts
as proven in the case.

First. We present the bond of $17,000, admitted to have been executed and delivered by the company to said trustees, as *prima facie* correct, and by no means controverted by the company, but admitted as correct by their silence in failing to answer this suit, although summoned.

Second. By the deposition of Thomas Hare, one of the trustees, in answer to the third, fourth, and fifth interrogatories, and in answer to first cross-interrogatory, prove the exception of the bond and mortgage sued on and delivery of same. The following question was put to said witness, viz:

"Question No. 6. State whatever you may know as to what debts of said Fairmount Gold and Silver Mining Company were secured, or intended to be secured, by the parties at the time the bond and mortgage was executed. Please be explicit in giving the names of creditors and the amount of the debts secured by the bond and mortgage; file a list of claims, showing names, dates, and amounts; mark it for identification as part of your deposition.

"Answer. I now file with the commissioner a list, showing what debts of the Fairmount Gold and Silver Mining Company were secured, or intended to be secured, by the bond and mortgage, at the time the bond and mortgage were executed. On the list now filed with the commissioner the names of the creditors, the
549 dates, and amounts of the debts secured by the bond and mortgage appear, I make this list, Exhibit "C," for identification, to be taken as part of my deposition, and is taken from the books of the company."

The following is the Exhibit "C" referred to in the answer, to wit:

Matthew Walker	Aug.	5th, 1868	$50 00
Jacob S. Fish	Aug.	5th, 1868	100 00
Thomas Hare	Aug.	5th, 1868	220 00
William Williams	Aug.	5th, 1868	20 00
Horatio Roop	Aug.	5th, 1868	80 00
Jonathan H. Pugh	Aug	5th, 1868	50 00
Gustavus Geissert	Aug.	5th, 1868	100 00
Peter Miller	Aug.	6th, 1868	200 00
J. Thornton Weaver	Aug.	7th, 1868	20 00
John Bateman	Aug.	11th, 1868	25 00
Ambrose H. Pritchell	Jan.	18th, 1869	70 00
George Myers	Jan.	29th, 1869	10 00
Myers Hoimeler	Feb.	3d, 1869	10 00
John R. Brownholtz	Feb.	22d, 1869	50 00
Peter Miller	Feb.	22d, 1869	100 00
Thomas F. Scattergood	Feb.	23d, 1869	15 00
Edward S. McGlue	Feb.	24th, 1869	20 00
Christian Van Gunden	Feb.	27th, 1869	10 00
R. C. Shelmadine, M. D.	Feb.	27th, 1869	50 00
William B. Moylan	Feb.	27th, 1869	20 00
Geo. M. Highley	Feb.	27th, 1869	20 00
Wm. H. Shelmadine	March	2d, 1869	100 00
Thomas Hare	Aug.	5th, 1868	333 34

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Jacob S. Fish	Aug.	5th, 1868	333 33
Wm. H. Shelmerdine	March	26th, 1869	250 00
Jonathan H. Pugh	March	26th, 1869	250 00
Thomas Hare	March	29th, 1869	250 00
Peter Miller	March	29th, 1869	50 00
A. L. Sleeper & Son	March	3d, 1869	15 00

Aaron S. Dunlery	March	12th, 1869	$15 00
Ezra Willits	March	17th, 1869	100 00
Matthew Walker	May	31st, 1869	50 00
Samuel B. Ely	June	18th, 1869	80 00
John B. Ely	June	18th, 1869	70 00
Jonathan H. Pugh	July	9th, 1869	333 33
Thomas Hare	July	9th, 1869	666 67
Mary Ann Vinal	July	15th, 1869	100 00
Matthew Walker	July	24th, 1869	133 33
Israel L. Fish	Aug.	28th, 1869	15 00
Peter Miller	Aug.	30th, 1869	200 00
John R. Brownholtz	Sept.	9th, 1869	30 00
Jonathan H. Pugh	Sept.	20th, 1869	133 33
Thomas Hare	Sept.	28th, 1869	333 33
Thomas Hare	Oct.	19th, 1869	66 67
Jonathan H. Pugh	Oct.	19th, 1869	66 67
Wm. H. Shelmadine	Oct.	19th, 1869	10 00
Thomas Hare	Nov.	16th, 1869	1,333 34
Jonathan H. Pugh	Feb.	4th, 1870	133 33
Thomas Hare		4th,	266 67
Thomas Hare		24th,	368 00

551

Jacob S. Fish		24th,	368 40
John R. Brownholtz	March	8th,	66 67
David F. Clinger		8th,	66 67
Peter Miller		8th,	450 00
Thomas Hare		9th,	266 67
Jonathan H. Pugh		11th,	333 33
Scattergood & Dunlery		12th,	66 67
Robert C. Williams		15th,	133 33
Charles W. Williams		15th,	66 67
Wm. H. Shelmadine	May	4th,	1,333 34
Jabez Lewis		20th,	266 66
James Durnell		21st,	80 00
George C. Hoaflich		21st,	10 00
Ezra Pratt		21st,	100 00
Horatio Roop		21st,	66 67
Matthew Walker		23d,	25 00
John Bateman		24th,	66 67
Ezra Willitts		24th,	25 00
R. C. Shelmadine	June	21st,	66 67
John R. Brownholtz	Dec.	2d,	66 66
Samuel Nelson	August	5th, 1868	150 00
Samuel Nelson	May	19th, 1870	25 00
Wm. B. Wharton	Aug.	15th, 1868	100 00
Thomas Nelson	March	26th, 1869	100 00
Samuel Brown	Aug.	20th, 1868	10 00
A. C. Brown	Aug.	5th, 1868	250 00

A. C. Brown	March 2d, 1869	$333 33
A. C. Brown	July 6th, 1869	183 33

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A. C. Brown	Oct. 9th, 1869	680 00
A. C. Brown	March 31st, 1870	350 69
Swain Thackara	April 12th, 1869	100 00
John P. Harker	May 17th, 1869	20 00
Matthew Walker	May 19th, 1870	50 00
Jacob S. Fish	May 19th,	452 50
Thomas S. Hare	May 19th,	555 00
Jonathan H. Pugh	May 19th,	540 00
Peter Miller	May 19th,	355 00
John R. Brownholtz	May 19th,	66 66
R. C. Shelmadine	May 19th,	25 00
W. H. Shelmadine	May 19th,	570 12
Ezra Willetts	May 19th,	30 00
R. F. Sherman	May 19th,	50 00
W. Irving Vinal	May 19th,	75 00
Samuel Arbuckle	August 5th, 1868	50 00
George Meyers	March 12th, 1870	15 00

Amounting to the sum of ---------------------- $26,488 05 besides interest.

There can be no doubt that these debts thus formed the sole indebtedness of the company at the time of the execution and delivery of the bond and mortgage aforesaid. The witness, who swears to the same, was present when they were executed; he was a stockholder of the company, and says he was conversant with its legislation, and knows that these debts were just, due, owing, and unpaid, and 553 were *bona fide* debts, and due for borrowed money at the time, and before the bond and mortgage were executed; that the bond and mortgage did *not* embrace, nor were they intended to cover any debts of the company created *after* the date of the bond and mortgage, to wit, 22d August, 1870. It was his business and interest to know, as he was a *trustee* under the bond and mortgage, and had individual debts against the company; and to correctly and lawfully execute the trust, this knowledge was absolutely necessary, as well to do his duty as a fiduciary, as to prevent liability and responsibility personally. I refer to his deposition throughout, to show his accurate knowledge and close intimacy with the business of the company and its legislation.

By reference to the certified transcript of the record from the district court of Clear Creek county, Colorado, in the common law case of John W. Thackara against the Fairmount Gold and Silver Mining Company, on file in this case, and which is referred to in the complainant's bill and defendant's answer, it will be seen that said common law suit was brought, and agreed by stipulation to be read as evidence in this case. Stipulation signed and filed to recover judgment on the following debts, to wit:

1.	Note to J. W. Thackara, dated	3d May,	1872	$20	00
2.	Same	30th April,	1872	30	00
3.	Same	17th April,	1872	1,789	50

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4.	Same	13th Dec.,	1871	10,000	00
5.	Swain Thackara	12th April,	1869	100	00
6.	John P. Harker	17th May,	1869	20	00
7.	Abram *ham* C. Brown	5th Aug.,	1868	250	00
8.	Same	5th Aug.,	1868	333	33
9.	Same	6th July,	1869	183	33
10.	Same	9th Oct.,	1869	680	00
11.	Same	31st March,	1870	350	69
12.	Same	26th March,	1872	15	00
13.	Same	30th April,	1872	60	00
13.	Same	6th May,	1872	25	00
15.	Same	2d July,	1872	190	00
16.	Same	15th Aug.,	1872	500	00
17.	Same	28th Aug.,	1872	250	00
	Amounting to the sum of			$14,796	85

And said Thackara, in said common law suit, did recover judgment in said court for said several debts, with interest and cost, as will be seen by reference to said certified transcript. Now, when we compare the list of debts as given in Exhibit "C" aforesaid in the deposition of Thomas Hare and the list of debts sued on by John W. Thackara in the common law court of Clear Creek county aforesaid, we find the following debts of said company thus sued upon are the same identical debts secured by the mortgage and bond aforesaid, to wit:

555

1.	Swain Thackara, note	12th April,	1869	$100	00
2.	John P. Harker, "	17th May,	1869	20	00
3.	Abram C. Brown, "	5th August,	1868	250	00
4.	Same	5th August,	1868	333	33
5.	Same	6th, July,	1869	183	33
6.	Same	October 9th,	1869	680	00
7.	Same	March 31st,	1870	350	69
	Making the sum of			$1,917	35

Of the debts due from the company, secured by the bond and mortgage aforesaid, being seven in number, and embraced in the common law judgment aforesaid, now there were ten other notes, not covered or secured by the mortgage, but sued upon by Thackara, and judgment obtained in the lawsuit aforesaid, which were created, and notes executed by the company, after the date of the mortgage aforesaid, to wit:

1.	Note to J. W. Thackara, dated	3d May,	1872	$20 00
2.	Same	30th April,	1872	30 00
3.	Same	17th April,	1872	1,789 50
4.	Same	13th Dec.,	1871	10,000 00
5.	Abram C. Brown	26th March,	1872	15 00
6.	Same	30th April,	1872	60 00
7.	Same	6th May,	1872	25 00
8.	Same	2d July,	1872	190 00
9.	Same	15th Aug.,	1872	500 00
10.	Same	28th Aug.,	1872	250 00
	Amounting to the sum of			$12,879 50

556 These debts, the witness Hare specially swears, were not secured by the mortgage, and he files a list of them in his deposition.

Now, John W. Thackara was one of the original incorporators named in the act of incorporation on file as an exhibit in this case, and was duly appointed a superintendent of the business of said company in Colorado, and was frequently present at the meetings of said company, or directors, at their office in Philadelphia, had free access to the books and papers of said company, was a stockholder in said company, and frequently examined the papers and books of said company, and was familiar with its acts and doings, and those of its officers, agents and servants, as fully appears from the deposition of Thomas Hare and others; and said Thackara was present when the above four notes aforesaid were executed to him, and knew well the consideration for the same, and the legislation of the company under which they were executed, which formed a part of the contract, and he accepted said notes coupled with a full knowledge of said legislation of the company, and agreed to be governed by said legislation in the collection of his debts.

He (Thackara) well knowing, and having been informed by the books of the company, by the records of Clear Creek county, where the aforesaid mortgage was recorded, and where Thackara resided as superintendent, and by Thomas Hare and others;
557 that said mortgage had been previously executed, delivered, and recorded before he accepted said four notes, as proven by Hare and others. The other six notes, executed to Abraham C. Brown, long after said mortgage was executed, was a fact well known to Thackara at the time they were assigned to him by Brown, and long before, that said notes were not secured by the mortgage; as well as knowing the consideration of the same, and the circumstances under which they were executed, and how they were to be paid, as shown by the deposition of Thomas Hare and others.

So that, according to the proof, the said John W. Thackara very well knew, when he brought his common law suit, that seven of the notes on which he brought the suit were secured by the mortgage, and ten of the notes, named in his common law suit, were not thus secured. The other creditors of said company were not parties to said common law suit, nor were the trustees, and they are not concluded or affected by its proceedings, in law or equity.

Having established by proof that the company did owe and was
justly indebted to its creditors in the sum of seventeen thousand
dollars at the time the company executed the bond and mortgage
aforesaid, we now come to the second issue presented by the answer
of defendant, to wit, that said mortgage and bond were executed
to secure the debts of the company then existing, and to
558 "secure the payment of certain debts thereafter to be con-
tracted, not exceeding seventeen thousand dollars. This
averment, I apprehend, was made to cover and embrace the ten
notes sued on in the common law suit of Thackara, which com-
plainants say were not secured by the mortgage.

The replication denies defendant's allegation, and the defendant has taken no proof to sustain it. Besides the complainants have proven by Thomas Hare and others that said mortgage was not given to secure debts created after its execution. The mortgage has no such provision in it, and the legal presumption is against such a proposition, and it would be harsh, indeed, and highly injurious to the creditors who were secured, to permit a horde of other creditors, whose debts were subsequently created, to jump in and snatch away their security, and leave them remediless. I will not pursue this subject further.

The fourth issue made by defendant is, that all the notes of said company, executed to the various creditors, except those upon which Thackara brought his common law suit, with a few exceptions, were all paid off and discharged before their suit was brought. Complainants' deny this allegation or charge.

The defendant has taken no proof to sustain it; but, on the con-
trary, the complainants, or trustees, have possession of said notes
for collection, with the consent of the payees, and the proof
of complainants shows conclusively that said notes are
559 due and unpaid, and are filed in this suit, in the deposition
of Thomas Hare; and he swears the payees in said notes have
directed him to bring this suit, and foreclose the mortgage and col-
lect the same. Several of said debts are due to the trustees them-
selves, which they swear are unpaid.

The *fifth* issue is that made by defendants, as follows: "Defendants aver that each and every of the said notes upon which suit (meaning the Thackara common law suit) was brought, were secured by the bond and mortgage," which complainants deny.

Now where is the proof? None such is taken by defendants. But on the contrary we find from complainants' proof that ten of said notes, sued upon by Thackara in his common law suit, were not secured by the mortgage, besides complainants have proven that those ten notes were created after the mortgage, and not covered by the mortgage, which ten notes, unsecured by the mortgage, amounts to $12,879.50, as aforesaid.

Now, finding from the proof in the cause that John W. Thackara was owner of seventeen notes of the company, of which seven *were secured by the bond and mortgage* aforesaid, amounting to $1,917.35, and likewise owner of ten bonds or notes of said company's, not secured by said bond and mortgage, amounting to $12,879.50, and all of them, secured and unsecured, were sued upon by said Thackara, at law, he being a virtual mortgagee or *cestui que trust*,
560 with full knowledge of the facts, and he having obtained
judgment at law, issued an execution, and caused it to be levied on the mortgaged property, the whole of it, and sold it and bought it in himself, and afterwards procured the sheriff's deed to be made to defendant, George B. Reed, his vendee, who is in possession, claiming the whole of the property. What is the law of the case upon this state of facts?

By reference to "Hillard on Mortgage," p. 409, he says: "One having a judgment, recovered in 1832, levied execution on land covered by a prior mortgage, dated in 1829, caused the land to be sold, and himself became the purchaser. The sale being absolute, he took a deed from the sheriff. The mortgage was afterwards foreclosed under the statute. Held, the judgment creditor [had] no title which could be set up in defense to an action of ejectment.

Block *vs.* Comkite, 1 Hill, 108, 110, 111.

In the case of Bronson *vs.* Robinson, 4 B. Monroe, 143, it was held "that if land be mortgaged to a surety to secure him against his liability for the mortgagor, it cannot be taken in execution by the creditor in a suit upon that debt. Although the creditor *is not* the actual mortgagee (as Thackara was not in this case), his debt is nevertheless secured by the mortgage. Though not nominal mortgagee, he is entitled to the benefits of the mortgage, and *may enforce it in equity*, and cannot, while he retains this right, be regarded as a gen-
561 eral creditor or a stranger to the mortgage, for he has a lien
in equity for his security. The mortgage secures the execution debt.

In this country, unlike that of England, our courts hold that the mortgagee, without the mortgagor's concurrence, can proceed in one of three ways: 1st, after defeasance, to take possession of mortgaged property, and apply the *profits* to the extinguishment of his debt; 2d, to sue in a court of common law, and enforce his judgment by execution in the levy and sale of *other property* than the mortgaged property, or by filing a bill and obtaining a decree for subjecting the mortgaged estate by sale to the satisfaction of his judgment; 3d, by filing his bill in the first instance for a foreclosure of the equity of redemption and a sale of the mortgaged property, or by filing a bill and obtaining a decree for subjecting the mortgaged estate by sale to the satisfaction of his judgment; and 3d, by filing his bill in the first instance for a foreclosure of the equity of redemption and sale of the mortgaged property, or so much as shall be necessary.

2 B. Monroe, 202, Caufman *vs.* Sayre *et als.*

In the case of Goring's Executrix *vs.* L. L. and T. T. Shreeve, 7 Dana, 64, involving the question whether *an equity of redemption*, and not the legal title, could be levied on and sold under common law execution, the court says: "The tendency of the decisions in this State have been against the validity of such sales, even in the case of a *general creditor.* * * * * But without determining
562 whether such sales were authorized at common law, under the execution of a general creditor, we can say that we know of no adjudged case of respectable authority in the English courts in which it has been definitely settled that the sale might be *made in satisfaction of the mortgagee's debts, secured by the mortgage.*"

In the case at bar, the record shows that the sheriff *levied on the mortgaged property, and not on the equity of redemption.* I hold the levy and sale void, because, at the time the levy was made, the *title* was in the complainants, Hare and Pugh, trustees, by virtue of the mortgage of 22d August, 1870, from the company, and the *legal title* was not in the company, for it only held an equity of redemption, and the sheriff's sale passed *no title* to the purchase, and the purchaser's sale to defendant, Reed, conferred no title, nor did sheriff's deed to Reed.

2 Dana, 68, Redman *vs.* Saunders.
2 Me., 132, Blaney *vs.* Beard.
2 Mass., 495, Erskine *vs.* Townsend.
3 Head., 30, Carter *vs.* Taylor.
2 II Chip., (Vt.,) 100, Briggs *vs.* Fish.
8 Mass., 551.
3 Nevada, 288, Whitmore *vs.* Shirerick.
9 N. H., 69, Glass *vs.* Ellison.
8 Leigh, 271.

Had the equity of redemption been levied on and sold, instead of the property itself, or the legal title, I still contend that the
563 virtual mortgagee, Thackara, could not do so to pay his mortgage debt, and if he did, he abandoned his mortgage security, and his debt becomes satisfied by the purchase money, and cannot be relieved in this suit; if he had any such right, it was derived from the common law or by express statute at common law, *only* the legal title could be seized and sold, *not an equity.*

2 McLean's U. S. Circuit Court Reports, 446, Hill *vs.* Smith.
1 Hilliard on Mortgages, 401.
8 East., 481.
13 Peters, 298, Van Ness *vs.* Hyatt.
5 Bos. & Pull., 461.
2 McL., (Ill.,) 267, Hill *vs.* Smith.

7 Dana, 66, Goring *vs.* Shreve.
1 Eng., 269, State *vs.* Lawson.
5 Smedes & Marshall, (Miss.,) 730, Goodwin *vs.* Anderson, etc.

The statute of Colorado authorizes and permits the equity of redemption to be levied on and sold under common law execution, as will be seen by reference to Revised Statutes, page 370, section 1, and page 384, section 52. But it is respectfully submitted to the court, that the proper construction of that act has reference *alone* to general *creditors* who hold judgments and executions, and does not embrace *mortgagee creditors.*

"It is to [be] observed that an equity of redemption is liable to
be taken up by legal process *only* in favor of *third* persons, or
564 other creditors of the mortgagor, than the mortgagee himself."

1 Hilliard on Mortgages, page 402, section 33.

There is no specific statute of this State, so far as I have been enabled to find, that *expressly* authorizes the mortgagee to sue at law on the mortgage debt, and levy his common law execution on and sell the land, which was mortgaged expressly to pay that identical debt, and it is believed none such exists in this State. And if no express statute to that effect exists, the levy and sale by Thackara are void.

23 Miss., 206, Baldwin, etc., *vs.* Jenkins.
8 East., 481.
5 Bos. & Pull., 461.

And if there be such statutory authority, then in the case in East., Lord Ellenborough remarks: "The sheriff could only sell subject to the trusts; that the execution creditor, or the vendee, would still be obliged to go into equity to get an account, or to *redeem prior incumbrances,* * * * besides the destruction of the debtor's estate, which, under so much doubt and difficulty, would sell greatly under value, so that a large *equitable* interest might be sacrificed or exhausted in satisfaction of a small demand, *to the detriment of other creditors.*" Such as the other mortgagee creditors in the suit at bar. In this case the sheriff did not sell subject to the trust or mortgage, but pretended to levy on and sell the legal estate in all the valua-
ble lands, and mines, lodes, etc., wholly disregarding the
565 rights and interest of the trustees and the *cestui que trusts*
under the mortgage, by which illegal acts *one* of the *cestui que trusts* under the mortgage *by which illegal acts one of the cestui que trusts under the mortgage* claims to hold and own *all* the mortgaged property by virtue of the execution sale, to the utter exclusion of the other creditors or *cestui que trusts,* who were secured equally by the same mortgage.

Goodwin *vs.* Anderson, 5 Smedes & Marshall, (Miss.), page 730.

In the case at bar it plainly appears from the affidavits of J. W. Thackara that he caused two attachments to issue in his common law suit, specifying the property to be levied on to pay his debts; and the property to be levied on to pay his debts; and the property he thus caused to be attached, as well as levied on by the sheriff under Thackara's execution, is the same property as admitted by defendant's answer as that embraced in the mortgage, when Thackara so well knew from the mortgage record and other facts and circumstances that it was the property conveyed in trust to secure a part of his debts, and such knowledge is fatal to his debts and his execution purchase.

5 Smedes & Marshall, 730.
23 Miss., 206.

Thackara can not take advantage of his own wrong, and defendant, G. B. Reed, was his attorney, who brought the common
law suit, as appears from the transcript filed, and is the same
566 person who afterwards purchased from J. W. Thackara and
took sheriff's deed, and admitted by stipulation filed.

It is believed and contended that even a mortgagee's interest under the mortgage can not be levied on, seized by sheriff, and sold to pay a debt to his general creditors. For before foreclosure, the mortgage remains seized and possessed, and the mortgagee has merely a chattel interest, a pledge for his debt, a *mere chose in action*. It is but an incident attached to the debt, and in reason and propriety it cannot and ought not to be detached from its principal. The mortgage interest, as distinct from the debt, is not a fit subject of assignment. It has no determinate value.

4 Johnson's Reports, 43. Jackson *vs.* Willard. Opinion by C. J. Kent.
19 Johnson, 325. Jackson *vs.* Bronson.
6 Cow. R., 147. Dickenson *vs.* Jackson.
1 Johnson Ch. R., 45. Tabele *vs.* Tabele.
2 Cow. R., 195. Wilson *vs.* Troup.
11 Johnson, 534. Runyon *vs.* Morseman.

In the case of Atkins *vs.* Sawyer, 1 Pickering, 351, the court stated the point of law to be, "Whether the mortgagee can, by common law judgment and execution, cause a sale to be made of the *equity of redemption*, for the purpose of paying or extinguishing, the debt secured by the mortgage," and the court decided that he could not. And if the equity could not thus be sold, how can it
be considered that a greater interest, to wit, legal, title
567 be sold? And more especially if that legal title has passed
out of the mortgagor, or execution debtor, and into the
mortgagee, as was done in the case at bar?

In the equity case of Annin against Aiken and Tice, 2 Johnson's Ch. R., page 125, in which a mortgage sued on the mortgagee debt in a court of law, obtained judgment, and levied his execution on the mortgaged property and sold it.

Chancellor Kent says:

> "The true and only remedy for all this mischief is to prevent such sales, and, I think, I shall be inclined, if the case should arise hereafter, *to prohibit the mortgagee from proceeding at law to sell the equity of redemption*. He ought, in every case, to be put to his election to proceed directly on the mortgage (in equity), or else to seek *other property* to obtain satisfaction for his debt. I see no other way to prevent a sacrifice of the interest of the mortgagor, and it is manifestly equitable that the mortgagee be compelled to deal with his security, so as not to work injustice."

And accordingly granted the mortgagor the relief asked for. Does not the same reason and principle equaly apply when the mortgagee attempts to levy his common law execution upon, and attempts to sell the *property itself or the legal title?*

The defendant, Thackara, in his common law case, sued out an
attachment at law, and had it levied on the mortgage prop-
568 erty, which was sold, etc., which attachment, levy, and sale
were *void* by the common law.

2 McLean's U. S. Circuit Court Reports, p. 269, Piatt *vs.* Oliver *et al.*

The purchase under the attachment acquired no title, and the learned judge says:

> "The vagueness and confusion and probable sacrifice of property would be as great under attachment as under execution. The interest attached clearly could not be reached by execution of mortgage, unless by express statute; that it may be liable by proceedings in chancery is not contested, and it would seem that *this* is the most appropriate, *if not the only*, mode by which such an interest can be made liable," etc.

2 N. H., 13.
10 Johnson, 481.

The legal estate being in Hare and Pugh, as trustees, the said Thackara held only an equity, and that subject to the equity of his *cestui que trusts*, and in the language of Judge McLean, *supra:*

> "How is such an interest to be reached by an action at law, and by the rules of the common law. We think it could not be levied on by an execution or an attachment."

If, however, the legal title or the equity of redemption could be sold by mortgagee at law, either under the common law or by express statute, and the mortgageé, Thackara, becomes the purchaser,
under an attachment or execution at law, does not his equit-
569 able title merge in his legal title, and Thackara becomes
vested, as *one* of the mortgagees, with the equitable and legal
title to the great, if not irreparable, injury of his *cestui que trusts*, under the mortgage, who were not parties to his suit at law.

Will a court of equity tolerate such gross injustice and such an outrage on the rights of innocent and non-resident co-mortgagees? The complainants ask the court to foreclose said mortgage and sell all the mortgage property, real and personal, and after first paying the costs, to which complainants are liable, then pay the mortgage debts controlled by them in full, if sufficient; if not, pay them *pro rata*, and to wholly exclude the ten notes owned and sued on at law by Thackara, which were not secured by the mortgage, and to postpone the seven notes owned by Thackara, on which he obtained judgment at law, until the other debts secured by mortgage are fully paid.

In the case of Thornton *vs.* Pigg, 24 Missouri Reports, page 250, it will be seen that Pigg executed a mortgage to secure the payment of a promissory note to one Brehm. That Brehm died, and his administrator instituted a suit at law against Pigg, and recovered a judgment. That the administrator of Brehm assigned the judgment, under the law, to one Thornton, as well as assigned the benefit of the mortgage; execution issued, but not fully satisfied. Afterwards Thornton brought his suit in equity to foreclose the
mortgage and sell the equity of redemption or the mortgaged
570 premises, and obtained judgment according to the prayer of
the petition, and the supreme court of Missouri, on appeal by Pigg, say:

"We see no weight whatever in the objections made against the regularity of this proceeding. It has always been the law that the mortgagee has three remedies against the mortgagor. * * * It is the law of this State that if a mortgagee, as was done here, (and as was done in the case at bar,) brings an action at law to recover the mortgage debt, and sells the mortgaged premises under execution and becomes the purchaser, he is just where he begun, *and will hold the mortgage land subject to redemption.* It is no ground for staying the proceedings under the statute for the sale of the mortgaged premises, that there has been a judgment at law for the mortgage debt. Such an idea has no support in any book that we have read. If the debtor will not pay the judgment, and no property can be found to satisfy it, why should he be restrained from a foreclosure? Why should the creditor be embarrassed with the difficulties attending a sale of the mortgaged premises under a judgment at law for the debt?"

The judgment below was *affirmed*.

This opinion was rendered by Judge Scott, one of the most able
and learned judges that ever sat on the bench, and had he
571 known the facts of the case at bar he could not have rendered
a decision that would more completely cover this case, and which opinion has been approved by the supreme court of many States of the Union.

"A creditor who takes a mortgage to secure a debt by bond, or otherwise, has three remedies, either of which he is at liberty to pursue, and all of which he may pursue until his debt is satisfied.

* * * If a creditor, having obtained judgment on his bond, issue execution, by which the mortgaged premises are taken in exetion and sold to a person *who has notice of the mortgage* and of its being unpaid, it will be deemed a sale merely of the equity of redemption or interest of the mortgagor, so that the mortgagee may bring an action of ejectment against the purchaser to recover the possession, and the mortgage interest is no further touched by the sale than that the purchase-money of the equity of redemption may go to diminish the amount of the debt."

10 Johnson Reports, 481, Jackson *ex dem.* Ireland *vs.* Hull.

When the Fairmount Gold and Silver Mining Company made the deed of trust on 22d of August, 1870, to Hare and Pugh, trustees, in trust to pay the debts of the company credited prior thereto, the *legal title* passed to the trustees by that deed of trust, and the company held only an equity of redemption.

572 2 Dana, 68, Redman *et al. vs.* Sanders.

The sheriff levied on the *legal title*, or on the property itself, and not on the equity of redemption.

The sheriff sold, or pretended to sell, the legal title thus levied on, and Thackara purchased at the sale and gave $24,873.01. Now, what did Thackara purchase? Did he purchase anthing; and, if anything, was it more than the *equity of redemption?*

And how can such a levy, sale, and purchase affect the legal or equitable right of the other mortgagee creditors, or the trustees either, none of whom were parties to the Thackara common law proceedings?

1 Hilliard, 186, sec. 6.

There is no statute of this State (Colorado) which I have been enabled to find, prescribing the length of time which which shall be allowed a *mortgagor* to redeem lands sold under *common law execution.*

Each case, therefore, stands on its own circumstances or merits.

Hardin's Reports, 519, Tunstall *vs.* McClelland.

But the statute gives the *defendant* in the common law execution, his heirs, etc., a right to redeem within six months, and a like right to redeem is extended to *judgment creditors* of defendant in the execution for nine months, etc.

Revised Statutes, page 373, Sections 13 and 14.

Now the complainants, Hare and Pugh, trustees, nor any of the *cestui que trusts* except Thackara were or are *judgment creditors*,
573 and consequently had no statutory right to redeem.

As to the statute of limitations of lands sold under common law execution, which have been previously mortgaged, and where there is no express limiting the time within which the mortgagor might redeem, I presume the following is the correct law in equity, viz:

"The statute of limitations does not in terms apply to suits in equity. Still its provisions have in many cases been adopted by the chancellor, and furnish the rule of decision of his court, to wit, twenty years adverse possession bars a right of entry. Twenty yards is a bar to collection of a debt, presumption of payment from lapse of time. The chancellor will not entertain a bill to redeem when possession has been held twenty years, nor redeem a slave held adversely five years."

1 Dana, 279. Fenwick *vs.* Macey's Executors.

In cases of *trust*, we have a statute in this State which prescribes a limitation, and is as follows:

"Bills for relief, in case of the *existence of a trust*, not cognizable by the courts of the common law, *and in all other cases not herein provided for*, (mortgagor and mortgagee, for instance,) shall be filed within five years after the cause thereof shall accrue, and not after."

Revised Statutes, page 439, Sec. 13, 8th Wallace, 202. Seymour *vs.* Freer.

574 The court says: "That the statute of limitations has no application to an *express trust* where there is no disclaimer."

In the case at bar the court will remember that the bond and *mortgage in trust* were both executed on the 22d August, 1870, and payable twelve months after date, with interest from date, and fell due on the 22d August, 1871, when the cause of action accrued.

The five years expired on 22d August, 1876, but this suit was instituted to enforce the trust on 26th of November, 1875, eight months before the time expired, and clearly within the statutory limitation of five years, and I presume it will not be denied that matters of trust are clearly equitable, if not exclusively so. Defendant Reed, as assignee of the mortgagee, Thackara, can not recover any cost in this action against the Fairmount Gold and Silver Mining Company.

4 Dana, 233. Ormsby *vs.* Philips.

The property levied on and sold by Thackara was a large estate, in different and distinct parcels, and capable of severance and division, and different mines and lodes, and should have been sold, if at all, separately to prevent sacrifice. But it seems all the property was sold in a lump or sold altogether, and bought by Thackara at a greatly inadequate sum.

2 Hilliard on Mortgages, p. 230, sec. 152.
4 Johnson Ch., 534.

575 One man at the sale might bid and desire to buy in one lode and give a full, fair price for it, but be wholly unwilling to bid for all; or he might be unable to pay for all and unwilling to buy, when others may.

It is evident from the proof taken in this cause by complainants that John W. Thackara brought his suit at law in Clear Creek county, Territory of Colorado, on the 22d day of March, 1873; that said John W. Thackara resided in said Clear Creek county and Territory as general superintendent of the company's mines and other property in said county, and has so resided there for many years previous to the bringing of that common law suit. As general superintendent, with a close intimacy with the president and other officers of said company, he being an active and trusted agent of the company, it is to be fairly presumed that he (John W. Thackara,) *knew* of the existence of the bond and mortgage sued on *before* he brought his common law suit, as they were executed on 20*th August*, 1870, and recorded. But aside from that presumption the complainants have proven by the testimony of Jonathan H. Pugh, Thomas Hare, John Russell, Alfred Smith, Jacob S. Fish, and Thomas J. Clinger, six credible witnesses, wholly unimpeached, that Thackara had positive and actual knowledge of the mortgage being *executed*.

In answer to question 17th, that in the "*spring of* 1871,
576 when John W. Thackara returned from Georgetown, Clear
Creek county, Colorado, as general superintendent of the affairs of the company, to Philadelphia, in the State of Pennsylvania, where the principal office was located, where the books and papers were, and where the president lived, he, the said John W. Thackara, expressly told Mr. Brown, the president of the company, that he *knew* the company had executed the bond of $17,000.00 and mortgage aforesaid; that he gained that information from the recorder's office in Clear Creek county, Colorado, and asked the president to explain the whole affair to him, which the president did. Besides his frequent examination of the books, papers, and office documents of the company, and that Thackara had full knowledge and complete information as to said mortgage, for what it was given, what debts it secured, and what debts were not secured."

Now, the court will bear in mind that the mortgage was executed and delivered 20*th August*, 1870, and recorded in Clear Creek county, Colorado, recorder's office, in the *same month and year*. That at least as early as the *spring of* 1871 John W. Thackara had *actual* and *positive notice* that the company had executed said mortgage. Nevertheless he employed able counsel, to wit, Gilbert B. Reed, the defendant, who brought the common law suit from him on 22*d March*, 1873. It is fair to presume that Thackara gave to his attorney all the information gathered from the records of
Clear Creek county, in 1870 *and* 1871, and the positive infor-
577 mation he gathered about said mortgage in Philadelphia, in
the spring of 1876, from Mr. Brown, the president of the company, and from Hare, Pugh, Clinger, Russell, Smith, and Fish, to enable his attorney to act advisedly, which information, thus imparted to Reed, gave him ample notice of the outstanding equity of complaint and *cestui que trusts* under the mortgage, and which notice he had, not only when he brought the common law suit, but when he (Reed) purchased from Thackara and took the sheriff's deed. Notice to the principal is notice to the agent, and *vice versa*. And

the conduct and actions of Thackara about this matter is denominated as a fraud by Kerr on Fraud and Mistake.

"Whatever is notice enough to excite the attention of a man of ordinary prudence and call for a further inquiry, is, *in equity*, notice of all facts, to the knowledge of which an inquiry, suggested by such notice and prosecuted with due and reasonable diligence, would have led.

"If a man has actual notice, sufficient to put a man of ordinary prudence on inquiry as to a particular point, the knowledge which he might, by the exercise of reasonable diligence, have attained will be imputed to him *by a court of equity*. The presumption of *the existence of knowledge* is so strong that it cannot be allowed to be rebutted."

Kerr, page 263, and the authorities there cited.

Again, Mr. Kerr says, on page 233: "Another class of
578 frauds upon third parties consist of cases where a man takes
or purchases property, *with notice* of the legal or equitable
title of other persons to the same property, and seeks to defeat their
just rights, by appropriating the property to his own use, *in equity
notice*, affects the conscience."

Now, complainant's reply on constructive notice, as the mortgage was on record in the county of Thackara's residence for several years before he bought under sheriff's sale.

And they also rely on *actual notice*, "which consisted in express information of the mortgage on record and of the *bona fide* debts, it was intended to secure, and brings home knowledge directly to a party. Actual notice must at least, where it depends on oral communication *only*, proceed from some one interested in the property."

Kerr, page 235.

Now, the company, as well as Hare, Pugh, Russell, Clinger, and others, who gave direct and positive information to Thackara, as to the recorded mortgage, were all interested in the property. There is no difference between actual and constructive notice in their consequences.

"If a man employs no solicitor, we will be held to have exactly the same knowledge, and will be liable to the same extent as if he had employed a solicitor."

Ibid, page 238.

How much greater the knowledge and liability when he employs an attorney?

On page 240 the same author says: "If a man has actual
notice that the property in question is, in fact, *charged, incum-*
579 *bered*, or in some way affected, or has actual notice of facts
raising a presumption that it is so, he is *bound in equity*, with
constructive notice of all facts, instruments to a knowledge of which
he would have been led by an inquiry, after the charge, incum-

brance, or other circumstance affecting the property of which he had actual notice."

8 Paige, 182.
2 Mumb, 129.
1 Smed. and Mar. Ch., 45.
25 Georgia, 403.
11 Texas, 140.
Hardin, 37.

"Notice of the *legal estate* being outstanding is notice of the *trusts* of which it is held."

Kerr, 248.
2 Freeman, 137.

"If a man has notice that a certain instrument affects the property in question in some particular respect, he will be fixed with notice of its provisions. * * * Notice of a charge to an indefinite amount, although the notice be inaccurate as to the particulars or extent of the charge, is *sufficient* to put upon inquiry a party dealing for the property subject to the charge, and if the actual charge appear afterwards to be correctly described in the notice, it is *nevertheless sufficient*, as a ground for giving priority for the *true amount* of the charge as against the party who received the incorrect notice." * * *

Kerr, 252.

580 In Taylor *vs.* Baker, 5 Pri., 306, "A party at the time of making his purchase, and before it was made, had actual notice that a certain person had a judgment and a warrant of attorney which affected the purchased estate, it turned out, however, that he had a *mortgage* and not a judgment, and the court held that the purchaser, having a notice that he had an *interest affecting the property, could not ward off the claim to the incumbrance*, only because the nature of the claim was different from the notice conveyed to him."

Ibid, 253.

How much stronger is the case at bar, where the true nature of the claim of the mortgagees was given in the notice by the witnesses?

"If a man has *actual notice* that the property, in respect of which he is dealing, is in fact affected by a particular instrument, he is *bound* to examine that instrument."

Ibid, 253.

Thackara cannot say that, although he did have notice of the mortgage, *it was a private paper and could not be seen*, for he was expressly informed that it was on record, in fact, he so reported to Hare, Pugh, Russell, and others, that he was in the recorder's office at Georgetown, Clear Creek county, Colorado, where it was recorded, and heard from of it then; and surely he must have read it, as he was largely interested as a stockholder, a creditor to a large amount, and general superintendent of the company.

On the subject of notice, I will refer the court to the following additional authorities, to wit: 581

2 Bibb, 94.
3 Bibb, 205.
2 B. Monroe, 105.
9 Peters, 86.
2 Hill's Ch., 421.
4 Blackf., 383.
2 A. K. Marshall, 65.
1 A. K. Marshall, 56 and 229, and the authorities referred therein.

"Another class of constructive frauds consists of those where a person purchases with full notice of the legal or equitable title of other persons to the same property. In such cases he will not be permitted to protect himself against such claims, but his own title will be postponed and made subservient to theirs.

"It would be gross injustice to allow him to defeat the just rights of others by his own iniquitous bargain. * * * In all such cases of purchases with notice courts of equity will hold the purchaser a trustee for the benefit of the persons whose rights he has sought to defraud or defeat."

Secs. 395 to 401, pages 422 to 430, Story's Eq. Jurisprudence.
1 John. Ch. R., 566.
2 John. Ch. R., 158.
10 Ves., 260, 261, 270.

Besides all this, the said John W. Thackara was an incorporator, a stockholder in the company, as well as a creditor, 582 and could not sue at law, but was compelled to go into equity for an account, and because of another fact, that the other creditors, as well as himself, had a *lien by law* on the effects and property of the corporation, and equity alone had power to adjust all questions of lien and priority among creditors, and a final adjustment as between the partners or corporators themselves.

This position is so universally recognized, and so well fortified by reason, analogy, and authority in England and America, that I deem it wholly unnecessary to refer the court to authorties.

The limitation of five years in Revised Statutes of Colorado, and referred to by me on page 21, has been re-enacted and incorporated in the general laws of Colorado, *in hæc verba*, page 597, section 13.

"Again, a mortgagor of *chattels* has an interest in the mortgaged property until it has been barred or foreclosed (in equity), which may be seized, taken, and disposed of by his (general) creditors. But this is such an interest that it must be taken and treated as *subservient* to the *paramount interest of the mortgagee*.

"The latter has a *vested right* to require the property be converted into a *satisfaction of his demand and subject to this right.* The creditors cannot deprive the *mortgagee* of the possession of his security, if he has any, nor can he assume control and *dispose* of the property, regardless of the *prior* right of the *mortgagee.*"

583 Freeman on Executions, sec. 117, page 160.
3 Wisconsin, 241, Cotton *vs.* Marsh.
6 Wisconsin, 627, Cotton *vs.* Watkins.

I presume the rule is as rigid as to real estate, without running down the authorities, as the reason is the same, if not greater.

"If the officer levies upon the *entire property mortgaged*, instead of upon the *interest* of the *mortgagor* therein, and assumes to control and dispose of the same absolutely, (*as was done in this case*,) the writ furnishes no justification for his action."

11 Wisconsin, 375, Frisbee *vs.* Langsworthy.
31 Alabama, 451, McCaughy *vs.* McCaw.

On the contrary, my opinion is, that the officer's action is void.

"At common law a mortgage operated as a conveyance of the *legal title*, and left the mortgagor, whether he continued in possession or not, the owner of a *mere equity*. During the continuance of the mortgage, it is clear upon the common law principles, that the mortgagor, as he was possessed of a mere equity, had no (legal) estate subject to execution. * * * And as between the mortgagor and mortgagee, the former had the equitable, and the latter the legal estate."

Freeman on Executions, sec 190, and the authorities there cited.

"The sale of the mortgagor's equity of redemption under
584 a *judgment at law for the mortgaged debt*, has always been regarded with disfavor. In some states it has been forbidden by statute, and when made, has been declared *void*."

Freeman on Executions, sec. 191.
6 Hill., 14.

Now, the court will bear in mind that the sheriff in this case did not levy on and sell the equity of redemption, but actually pretended to levy on and sell the legal title to all the mortgaged property under the execution and attachment, and with the knowledge and consent of said Thachara and his attorney and subsequent vendee, G. B. Reed.

In my opinion the levy and sale were void.

"It seems to be conceded that the mortgagee may sue at law for his debt, by so doing he *elects to pursue* OTHER PROPERTY than that mortgaged to him.

"He will not be allowed to sell the equity of redemption, and at the same time to retain his *title under the mortgage.* His attempt to do so is always regarded as oppressive."

Freeman on Executions, sec. 191.
6 Hill., page 14.

In the first part of this brief I called the defendant, Gilbert B. Reed, by the name of *George* B. Reed, which misnomer I now correct. And in the addition of the claims in Exhibit "C," sworn to by witnesses, Hare and Pugh, an error was made in summing up; it amounts to $17,387.05. But I apprehend that immaterial
585 errors will be disregarded by any enlightened court of equity.

The complainants, therefore, respectfully ask that a decree be rendered foreclosing said mortgage, and ordering a sale of all the personal and real estate named therein, or a sufficiency thereof, to pay the debts and interests of the complainants, and *cestui que trusts*, and the equity of redemption barred; that the debts of Thackara, which were due him individually, and which were assigned to him by others, and secured by the mortgage on which Thackara brought his common law suit, be postponed until the other mortgage debts be paid, and that the other debts of Thackara, not secured by the mortgage, be wholly excluded. And they ask for all general, special, and equitable relief to which they may be entitled.

(S'g'd) THOMAS HARE,
(S'g'd) JONATHAN H. PUGH,
Trustees.

January 6, 1879.

Since preparing the foregoing brief, after a full consideration of the whole case, I find that I have not referred to the question of "payment," as set up by defendant in his answer, and upon consultation with the law firm of Messrs. Brown & Putnam, who have an extensive law library, they have furnished me with the following brief on the question of "payment and novation,"
586 which I cheerfully acknowledge and adopt, and append it to my former brief, and commend it to the careful consideration of the court, to wit:

There is yet another question involved in this record which has not been discussed by Mr. King, to which we call the attention of the court. The legal effect of the action of the board of directors, in adopting the resolution of February 8, 1873, did it amount to a novation or a payment of the mortgage debt or any part of it?

As we are advised, the pleadings and evidence concur in recognizing the mortgage to the plaintiffs to secure the payment of $17,000.00 of the debts of the company, dated in 1870, being the mortgage sued on in this case. This mortgage remained in full force, as all admit, until the 8th of February, 1873, when the resolution was adopted for the conversion of these bonds into the stock of the company.

This resolution bound *no one* until he had voluntarily submitted himself to its provisions, and then only when its *proviso* had been fulfilled; that is to say, that all of the bondholders had come under its terms *within ten days* after its adoption. If *all* did not do so, *none* were bound; all did *not* do so within that period, nor did all do so

at any time: the conditions were not observed, and none were
bound, and the resolution became a nullity, and had no effect.
587 In the testimony of Mr. Shelmerdine, taken by defend-
ant, he swears that he took the stock of the company pursuant to the resolution, but also says that the company held the bonds by him surrendered, in trust for him, and adds, in fact I have not only the stock issued in lieu of my certificates, *but I have the bonds also.*

Mr. Fish, in his first deposition, taken at the instance of the defendants, swears *apparently* that he had surrendered his bonds and taken stock instead, and had sold part of that stock; but in his second deposition, filed herein March 3, 1879, he swears that he only took the stock in lieu of his bonds, on the condition of the *resolution that all should take them;* that he had never *sold* any of *that stock* and produces the certificate and appends it to his testimony, making it "A;" that he demanded the return of his bonds from the president of the company on finding that the resolution *had not* been complied with; that the president ordered the secretary to deliver them, and that the secretary *did deliver them to the plaintiffs at his request, for the purpose of foreclosure.*

This state of facts we think may be regarded as true of the whole transaction as shown in the evidence. Do these facts show any novation of the debts or their payment? We think not; novation is a full discharge of the original debt by the substitution of another,
and to make it binding, the *express agreement* of the parties
588 that the *new* shall extinguish the *old*, must be shown by the
parties claiming it, it must not be subject to any *contingency*
or *condition* which has not arisen or been fulfilled.

Jacobs *vs.* Calderwood, 4 La. R., 507.
Overend *vs.* Robinson, 10 La. R., 728.
Borderlin *vs.* Weymouth, 14 La. R., 93.
Taylor *vs.* Simon, 14 La. R., 351.

Nor was the transaction a *payment* of the bonded debt; the condition in this resolution was the condition of the company, and until *assented* to by the *bondholders*, could not bind them.

In the case of Crany *vs.* Bowers, 20 Cal., 86, 89, this court is called upon to decide a question of *payment by substitution* or *novation.*

The action was to *foreclose* a *mortgage* for $4,000. Defense, that one B. had given two notes for the amount which had been delivered to and accepted by plaintiff, but the original securities were not surrendered, nor was it shown that the notes were received in satisfaction of the original claim. The court held that the transaction was only a supsension of the original remedy.

In the case of Welsh *vs.* Wellington *et al.*, 23 Cal., 322, A
being in debt to B, gave his note for the amount; he then
589 gave B C's note for same amount, took up his own note by
B's consent and *destroyed* it. C did not pay; B sued A on
the destroyed note and recovered in two grounds: first, because B

did not expressly agree that C's note should pay the debt; and, secondly, that without that express agreement, C's note only operated as an extension, not as a payment, and cite Olcott *vs.* Rathbone, 5 Ward, 490, to which we call your honor's attention.

Cole *vs.* Sacket, 1 Hill, 516.

This case decides that the promissory note of a debtor for a precedent debt on simple contract, even when taken with express agreement that it shall pay the debt, does not so operate; otherwise, if the note on a third person is so taken, and agreement proven.

Smith *vs.* Rogers, 17 John. R., 340.
Winstead Bank *vs.* Webb, 39 N. Y., 325.
Nightingale Ass. *vs.* Chaffee, 23 Am. R., 531, from 11 R. I., 609.

These authorities, to which might be added very many others, would seem clearly to indicate the rule of law to be, that where a party claims that *one security* has been received in *discharge* of another, the *onus* is on him who asserts to show that the *new security* was by express agreement *received* in *discharge* of the old. No such agreement has been shown in the case at law; all that has been shown, is an offer by the mortgagor to the mortgagees of a certain mode of compromise, coupled with a condition, which offer
590 was never accepted because the condition was not fulfilled.

But again, if the bonds were ever paid, Mr. Thackara's bonds, covered by the mortgage on which he attached were also paid, and he was guilty of a fraud on the company, of which defendant Reed, being his attorney, is chargeable with notice.

It can not be claimed that the bonds of those *who never accepted* the stock, and which were also secured by this mortgage, were paid by the effect of this resolution, for then the plaintiffs at the least, are entitled to foreclose; their lien was not divested either by the resolution, or sale under the attachment. Mr. Thackara's claims sued on were secured by the same mortgage that secured these bonds held by others; the mortgagees, although they took the security of the mortgage, were not thereby estopped to maintain an action at law on their bonds. They might each sue on their bonds at law, and proceed to foreclose in equity, or either as the law stood at the time of filing the original bill, but we maintain that one mortgagee, Mr. Thackara, for instance, could not slip into a court, and by constructive service, and a judgment by attachment against the property, obtain the advantage he and Mr. Reed claims he obtained over the other mortgagees; this would be an act of bad faith, which courts would not tolerate. It no event was the proceeding in attachment a satisfaction of more of the mortgage debt, than to extent of the securities held by Mr. Thackara,
591 and by him included in this action at law.

BROWN & PUTNAM, *Of Counsel for Plaintiffs.*
JOHN Q. A. KING, *Attorney for Complainants.*

APRIL 3, 1879.

Endorsed: No. 124. Brief of ——. King, for compl'ts. Filed Jul. 19, 1879. S'g'd Edward F. Bishop, clerk.

And afterwards and on, to wit, the 27th day of October, A. D. 1879, came again the said defendants, by their solicitor, G. B. Reed, Esq., and filed in said court and in said cause their brief and argument of defendant, and the said brief and argument are in words and figures as follows, to wit:

592 *Brief of Defendant.*

In the Circuit Court of the United States, District of Colorado.

THOMAS HARE and JONATHAN H. PUGH, Trustees, Plaintiffs, *vs.* THE FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*, Defendants.	In Chancery.

Brief and Argument of Defendant.

This suit is brought for foreclosure, to subject the property described to the payment of certain notes, 88 in number, filed as exhibits, made, as it is alleged, by the Fairmount Mining Company, and delivered to sundry persons, secured, as is alleged, by mortgage, etc. The mortgage bears date August 22d, 1870. Eighty-seven of the notes bear date prior to the execution of the mortgage; one December 2d, 1870, subsequent to the execution of the mortgage, for the sum of $66.66.

The aggregate amount of all the notes filed, and upon which the suit is brought, is $9,426.52. It cannot be claimed by plaintiffs' testimony that the mortgage was intended to cover the note made in December. Hence the note of $66.66 must be thrown out, leaving the aggregate amount $9,359.86. No question is made as to the execution and delivery of the notes and mortgage.

The bond and mortgage were void. There was no authority to execute the same upon the property of the company, as shown by the minutes of the corporate meetings. (See "Ex. D," plaintiff's depositions.)

Extracts from minutes of stockholders' meeting, held at Philadelphia June 16th, 1868: "After considerable discussion as to the best means of raising funds *for the completion of our works in Colorado*, it was moved and carried that the directors be empowered to raise money *for the completion of our works in Colorado*, by bond and mortgage, as they may deem best."

Minutes of board of directors' special meeting, held July 27th, 1878: "On motion, resolved, that Wm. H. Shelmerdine and Charles H. Brown be appointed a committee to prepare form of bond and report." "On motion of Jacob S. Fish, the form of bond was read and adopted."

Here the matter dropped, and all action of the stockholders ceased under the vote of June 16th, 1868, authorizing the execution of bond and mortgage, to borrow money "for the completion of our works in Colorado."

After a lapse of nearly two years, the following appears: Extracts from the minutes of the regular meeting of the board of directors, held February 15th, 1870:

"On motion of J. H. Pugh, the officials of the company were authorized to issue an additional $5,000 in bonds of the company, at the usual discount of 25 per cent. on the dollar.

"It was resolved, on motion of J. H. Pugh, to call a meeting of the bondholders and directors together to consider the *propriety of raising more funds to further the interests of the company*, to meet at the call of the president.

"Meeting adjourned to meet March 1, 1870."

593 On July 19th, 1870, at a meeting of the board of directors:

"On motion of J. H. Pugh, a committee of two be appointed to prepare and submit a plan by which the bondholders be made secure for money loaned at different times, and take such legal advice as they think necessary, and report the same to the next meeting of the board, which was agreed to."

The president appointed Pugh and Shelmerdine, and president was added to the committee.

On the 22d July, 1870, over two years after the stockholders had met and authorized a bond and mortgage for *one purpose*, the committee reported, and after a preamble and resolution, says:

"Whereas, at a meeting of the stockholders of the Fairmount Gold and Silver Mining Company, held * * * on June 16th, 1868, it was resolved that the board of directors be authorized to borrow money for the further improvement and development of our property in Colorado Territory, by giving bond and mortgage as security for the same as they deem best; and whereas a number of the stockholders have been furnishing funds from time to time, taking therefor the company's notes, and a number of those notes being due and unpaid, and demand being made for the payment of the same, or better security given therefor.

"*Resolved*, That the proper officers of the company be authorized and instructed to execute a proper bond and mortgage, or bonds and mortgages, sufficient to cover said demands, and affix the corporate seal and proper signatures to the same."

On August 19th, 1870, at a meeting of the board of directors, Pugh and Hare were elected trustees.

On August 24th, bond and mortgage were submitted, approved, executed, and delivered.

It is not claimed or pretended that any other authority for the execution of bond and mortgage, except that of June 16th, 1868, was given; that was for *one* purpose; the bond and mortgage was executed for *another*, over two years later.

I am aware that when debts have been contracted by a corporation, with persons outside, who have no knowledge of the want of authority and capacity to contract, courts are inclined to hold them good; but such is not this case. Here the parties to be benefited were the officers of the same corporation, and stockholders who had full knowledge and participated in the proceedings. That the bond and mortgage were made and delivered only under the resolution of June 16th, 1878, is established, not only by the minutes of the corporation, but by the evidence of the trustees, Hare and Pugh. (See depositions.)

There is no provision in the special charter of the corporation allowing the borrowing of money on mortgage, or pledge of the property, hence it must be controlled by the general law relating to corporations—and in such cases, the realty following the stock and being represented by it, no pledge or mortgage would be valid without full authority from stockholders to make the same. That the directors of the corporation are only trustees of the stockholders, is too elementary to need authorities in its support, and when the act, as in this case, is unauthorized, it is clearly void.

On the 8th day of February, 1873, the Fairmount Company passed the resolution for taking up its certificates of indebtedness and issuing stock therefor, and prior to the 22d day of March, all except some $2,000 was exchanged, the certificates taken in by the company, and stock issued for the same. Of the $2,000, or about $2,000, that was not converted, $1,917 belonged to J. W. Thackara, and an examination of schedules, attached as exhibits, will show that, aside from the certificates held by J. W. Thackara, there were only about $200 left outstanding and unconverted.

While this was the situation of affairs, and the entire in-
594 debtedness, secured by the bond and mortgage, save the certifi-
cates held by Thackara and the $200, had been paid and taken in, and was in the hands of the company, J. W. Thackara instituted, on the 22d of March, 1873, his suit against the company on the certificates claimed to have been secured, and other indebtedness of the company to him, by attachment. The action was defended by the company, delayed and postponed by it, until the December term, 1874, when plaintiff Thackara obtained judgment. And on March 13, 1875, the property of the Fairmount Company was sold to satisfy such judgment and purchased by Thackara.

That the trustees, company, and stockholders had full notice of the whole proceeding cannot be questioned, as an examination of the records of the case will show that the depositions of the trustees and others were taken by the defendant and used upon the trial. I may here, also, be allowed to remark that it appears from testimony in that case, as in the present, that the trustees now seeking to foreclose, at the time they had themselves appointed trustees, and for a long time before and after, were the officers of the Fairmount Company. Affairs remained the same, and there was no action by the company, pretended holders of certificates or notes, or the trustees, until the institution of this suit, and the certificates that had been taken in by the company were not resurrected until the expiration of time of redemption by the company.

I will now call the attention of the court to the following propositions, fully established by the evidence and uncontradicted:

First. That the money advanced for which certificates were issued was advanced by stockholders and officers of the company, who were familiar with all the details of affairs (see testimony of Hare and Pugh, and minutes of corporate meeting, Ex. "D," Pl'ffs' Tes.)

Second. That the parties voluntarily surrendered the certificates to the company and took the stock of the company in lieu of them (see Def's' Tes., Dep. Shelmerdine, Clinger, Fish, and Hare.)

Third. That the holders of certificates, who converted them into stock, surrendered the certificates to the company and took the stock, still retain the stock, have never attempted to rescind, and have never had possession of the certificates since the surrender and conversion.

In the deposition of Alfred Smith, taken on part of defendants, he says:

"The object of the passage of the resolution was to liquidate a mortgage debt of $17,000, secured by bond and mortgage dated Aug. 22, 1870. There was about $11,400 worth of bonds surrendered.

"The holders of the bonds not surrendered were: Abram C. Brown, about $1,800; Samuel Nelson, about $175; W. B. Wharton, about $100, and others, making a total of about 2,140 odd dollars. The balance of the $17,000 indebtedness, for which the mortgage was created, amounted to about $3,200, *and no certificates were issued to the parties for that indebtedness.*"

The $1,800 of A. C. Brown was assigned to Thackara, and was embraced in his suit. The "others" of which the witness speaks, as making the 2,140 odd dollars, were those of J. W. and S. Thackara, embraced in same suit, so that all the certificates not surrendered to the company, or embraced in Thackara's suit, were those of Nelson—about $175—and Wharton, about $100, and agrees with the answer of defendant.

The witness also says: "I have been a director ever since September, 1871, and have been secretary since June, 1872. The certificates of indebtedness, or bonds, that were surrendered under this resolution, came into my possession, as secretary of the company, and they remained in my possession until they were demanded from the company by the trustees, some time during the year 1875. They were handed over to the trustees, and a receipt taken therefor.
595 I have not the receipt with me. *By direction of the president of the company they were handed over to the trustees. The president directed me to hand them over to the trustees at their request on his*

own responsibility, without any order of the board of directors or of the stockholders. I have no recollection of any bondholder who exchanged his bonds for the stock of the company, under the resolution, ever demanding of me a return of his bonds, and tendering his stock he had received in lieu of the bonds. When I say to me, I mean in my official capacity as secretary of the company. *So far as I know, I have no recollection of any such demand being made upon the company.* The last I knew of these bonds they were in the possession of the trustees."

Thomas Hare, trustee, says: "I turned these bonds over to the company, and they are now technically in their possession, but in fact in possession of our attorney in Colorado."

Fourth. The same testimony establishes the proposition also, that the delivery of the certificates to the trustees was the unauthorized act of the president of the defendant, the Fairmount Company, after they had been taken in and held by the company nearly three years.

The parties to whom the certificates were issued being stockholders and officers, were, by reason of such relation, charged with knowledge of the irregularity of the bond and mortgage, otherwise as creditors of the corporation they occupied the same position as any other individual. I do not question the right of stockholders or officers to deal with the corporation, and admit that the relation of debtor and creditor can legally exist between them, but that relation is one separate and distinct from the official position; each person has individual transactions as a stranger, and the contract of funding was an individual contract of each holder of certificates with the company; and when certificates were surrendered and stock taken, that was an executed contract in each instance not voidable by the company; but if at all at the option of the individual, and if voidable by the company only as in other contracts by a calling in of the stock and re-delivery of the certificates.

Here was no recision of the contract of conversion by the parties that converted their certificates; they retained the stock and never received their certificates back. It cannot be pretended that the president of the corporation was, by virtue of his office, the agent of the individuals for that purpose, because the act of recision in each case must have been an individual act of the person as creditor—not of the person as stockholder. Now, the fact fully appears throughout the testimony, that the Fairmount Company, though nominally a defendant, is really a plaintiff through its own officers, and that, after the sale of the property under execution and the expiration of the time of redemption, the company, through its president, resurrected the securities that had been dead nearly three years, and delivered them to the trustees for the purpose of defeating the title and the collection of the debts of other creditors.

The brief of plaintiffs' counsel is to great length devoted to what he calls *constructive* fraud, while his whole case teems with actual fraud of the trustees as officers of the company, and collusion between them and the president of the company to put it again in being, securities that should have been cancelled; if not cancelled, returned, and the stock cancelled, if the other parties had consented. Even if the stockholders who converted their securities had desired and declared their intention to rescind, they could not have done it at that time, for obvious reasons.

First. The time of conversion was, for all, ten days; nearly three years elapsed after the conversion.

"Whichever party has the right to rescind must do it within the time specified, if there be such a time, otherwise within a reasonable time."

2 Pars. Con., 677, and cases cited.

Second. There can be no recision unless the parties are placed in *statu quo.*

596 *Third.* A contract can only be rescinded by all parties to it.

In this case, with the exception of the trustees themselves, if I recollect correctly, or perhaps one other individual, there is no evidence that the individuals consented, advised, or even had knowledge of the affair.

So far as I have proceeded upon the law as it would stand were the parties ordinary dealers and contractors with each other. But such is not the case: the parties who exchanged their certificates for stock, by that exchange became the debtors of others having claims against the corporation.

The capital stock of a corporation is a trust fund for the payment of debts of a corporation. The creditors of the corporation have the first claims upon it, and the stockholders have no right until all the other creditors are satisfied. These are general principles of law, applicable to all stock corporations, and exist independently of legislative act or intention, and are applicable to the corporation defendant in this suit and the members attempting to foreclose.

Ang. and Ames on Corp., Sec. 600, and cases cited.
2d Story Eq. Jur., Sec. 1252.
Wood *vs.* Dummer, 3 Mason, 308–311.
Dudley *vs.* Price's Admr., 10 B. Mon., 84–86.

The relation of the stockholders in a corporation to its creditors, whether before or after dissolution, especially if the corporation be insolvent, as the corporation in this case is shown to be, is the same as the corporation itself. The stockholders stand in the relation of *debtors* to such creditors. They clearly stand in this relation as to all the stock owned by them in such corporation. Whether they are to be regarded as individual debtors or not, their stock is pledged fot the payment of the debts of the corporation, and to that extent both they and their stock are debtors to such creditors.

"The corporation itself is bound, during its existence, to administer its funds for the benefit of its creditors and stockholders, and all others interested in its pecuniary affairs, and at its dissolution creditors are preferred to stockholders, on account of the peculiar trust in their favor, and because the latter *as constituted members of the corporate body are regarded as sustaining*, in that respect, *the same relation* to the former *as that sustained by the corporation;* and in equity, the property of the corporation is regarded as held in transfer for the payment of the debts, and also that the stockholders are not entitled *to any part of the capital stock* or dividends of the profits until all the debts are paid."

1st Potter's Law of Corp., Sec. 308.

Now, this being the general principle, the law of corporations, I ask how can parties who have voluntarily, as to themselves and their property, assumed the position of debtors for three years, at their own option, change their personal status and that of their property, and from being debtors, become creditors, for the purpose of defrauding others, *bona fide* creditors of such corporation?

And if parties cannot do it themselves, how can the corporation, or its president, without the knowledge or consent of the individuals, assume for them a position they do not claim for the same purpose, and for the purpose of collecting claims they may have personally have?

In the depositions taken, and in the briefs, considerable stress appears to be laid upon the supposed fact that the claims of Thackara, the notes of the company, were only payable when the minds yielded profits. I propose to spend no time upon this proposition. In the case below the same claim was relied upon as a defense. Depositions were taken, etc., and that question being *res adjudicata*, cannot again be contested.

Considerable time and labor seems to have been expended in the brief of plaintiffs to show that the conversion of the certificates into stock was not a payment. I have already attempted to show
that the relations of the parties were changed; that the
597 parties who were creditors voluntarily became the debtors,
and that the case differed materially from that of individuals not bearing the same relation to the corporation and its property and indebtedness. But even when the relation is only that that exists between ordinary debtors and creditors, the law is not as is assumed by the learned counsel.

See 2 Par. Con., 681, 685.
Babcock *vs.* Hawkins, 23 Vt., 561.

Where Redfield, J., says:

"We think it must be regarded as fully settled that an agreement upon sufficient consideration, fully executed, so as to have operated in the minds of the parties as a full satisfaction and settlement of a pre-existing contract or account between the parties, is to be regarded as a valid settlement, whether the new contract be ever paid or not; and that the party is bound to sue upon the new contract if such were the agreement of parties. This is certainly the common understanding of the matter. It is reasonable, and we think it is in accordance with the strictest principles of technical law. * * * All that is requisite is that the debtor should have executed the new contract to that point whence it was to operate as a satisfaction of the pre-existing liability in the present tense."

See also—

Sard *vs.* Rhodes, 1 M. and W., 153.
Good *vs.* Cheeseman, 2 B. and Ad., 328.
Evans *vs.* Powes, 1 Exch., 601.

In this case they were executed contracts; the creditors agreed to deliver the evidences of indebtedness for shares representing an interest in the capital stock of the corporation. The certificates were surrendered to the corporation, and its stock delivered in lieu of the same, and was in each instance full and complete satisfaction of the original claim.

Very respectfully, G. B. REED.

598 Endorsed: No. 124. In the circuit court of the United States, district of Colorado. Thomas Hare and Jonathan H. Pugh, trustees, plaintiffs, *vs.* Fairmount Gold and Silver Mining Company *et al.*, defendants. Argument of defendant. G. B. Reed. Filed Oct. 27, 1879. S'g'd Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 5th day of January, A. D. 1880, the same being one of the regular juridical days of the October term, A. D. 1879, of said court—present, the Hon. Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order.—Leave to Amend Bill.

THOMAS HARE AND JONATHAN H. PUGH, Trustees,
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*
In Chancery. For an Account, &c. From Dist. Court, Clear Creek Co.

At this day come the said complainants, by S. E. Browne, Esq., their solicitor, and the said defendants, by G. B. Reed, Esq., their solicitor, also come.

599 And this cause having heretofore come on to be heard upon the pleadings and testimony herein, and having been submitted to the court, and by the court taken under advisement, and the court being now sufficiently advised in the premises, it seemeth to the court here, and the court doth find, that the proper parties complainants do not appear herein to enable the court to grant the relief in the said bill of complaint prayed for.

Wherefore, it is ordered, adjudged, and decreed by the court, that the relief prayed for in the said bill of complaint be denied.

Nevertheless, on motion of the said complainants, it is ordered by the court that the said complainants have leave to amend their said bill of complaint herein as they shall be advised.

And afterwards and on, to wit, the 14th day of April, A. D. 1880, came again the said complainants, by Brown and Putnam, their solicitors, and filed in said court and in said cause their "second amended bill" against the said defendants, and the said second amended bill is in words and figures, as follows, to wit:

Amended Bill.

UNITED STATES OF AMERICA, } *ss:*
Eighth Judicial Circuit, District of Colorado, }

600 In the Circuit Court.

JONATHAN H. PUGH, Surviving Complainant, and Trustee of Thomas Hare, Deceased,

vs.

THE FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*

Amendments to Amended Bill of Complaint, filed by leave of the Court.

To the honorable the judges of said court:

Your orator, Jonathan H. Pugh, surviving complainant, and trustee, most respectfully represents unto your honors, that all of the said creditors of the said Fairmount Gold and Silver Mining Company, who, on the 22d day of August, A. D. 1870, were the owners and holders of the several evidences of indebtedness secured by said penal bond and deed of trust to your orator and his co-trustee's, now deceased, that is to say, Matthew Walker, Jacob S. Fish, William Williams, Horatio Roop, Gustavus Geissert,
Peter Miller, J. Thornton Weaver, John Bateman, Am-
601 brose H. Prichett, George Myers, Myers Homiller, John
R. Brownholtz, Peter Miller, Thomas F. Scattergood, Edward S. McGlue, Christian Van G. Van Gunden, R. C. Shelmerdine, William B. Moylan, George M. Highley, Wm. H. Shelmerdine, J. L. Sleeper & Son, Aaron S. Dunlery, Ezra Willets, Samuel B. Ely, John B. Ely, Mary Ann Vinal, Israel L. Fish, David T. Clinger, Robert C. William, Charles W. Williams, Jabez Lewis, James Durnell, George C. Hieflick, Ezra Pratt, John P. Harker, Sam. Nelson, Wm. B. Wharton, Thomas Nelson, Sam'l Bowen, A. C. Brown, Swain Thackara, R. F. Shannon, are necessary parties to the said bill of complaint, and that the said parties are now, and at the time of the filing of the original complaint herein were, the owners and holders of the several evidences of indebtedness set forth as owned and held by them respectively in the amended bill herein filed in said court May 6th, A. D. 1878; that the said several persons named as last aforesaid declining to join as parties com-

plainant, your orator prays that they may be made defendants to the said bill of complaint; that process of subpœna in chancery may issue against them, and each of them, commanding them to appear before said honorable court by a short day therein to be named, and under proper penalties, and then and there to answer all and singular the said allegations of the said complaint
602 as amended (but not under oath, their oaths thereto being hereby waived,) as fully and specifically as though they were, as to the several allegations of the said complaint, specially thereunto interrogated; that they may be compelled to present ther said claims against said company, defendant, to said honorable court for adjustment; that on the final hearing of said cause the said claims of said defendants, if any they have against said defendant company, may be adjusted by the decree of said honorable court, and decreed to be paid under said decree, and that as to the claims of the said defendants, the complainant may have such other and further relief in the premises as to the said court may seem meet and equitable in the premises.

(S'g'd) BROWN & PUTNAM,
Solicitors for Complainant.

Endorsed: No. 124. Jonathan H. Pugh, surviving trustee, &c., *vs.* The Fairmount Gold and Silver Mining Co. *et al.* Second amendment to bill. Filed Apr. 14, 1880. S'g'd Edward F. Bishop, clerk. Brown & Putnam, Denver, Colo.

603 And afterwards and on, to wit, the 13th day of May, A. D. 1880, came again the said defendants, by Horace Castle, their solicitor, and filed in said court and in said cause their power of attorney to said Horace Castle, and the said power of attorney is in words and figures as follows, to wit:

Power of Attorney to Horace Castle.

United States of America, District of Colorado, Eighth Judicial Circuit. In the Circuit Court.

J. H. PUGH, Surviving Trustee, etc.,
vs.
THE FAIRMOUNT G. & S. MINING COMPANY *et al.*

We, the undersigned defendants to the bill of complaint in the above-entitled cause, hereby authorize Horace Castle, Esq., of Denver City, Colorado, to appear in said court in our behalf, and waive the issue and service of proofs, and enter our appearance therein.

(S'g'd) JONA. H. PUGH.
PETER MILLER.
604 EZRA PRATT.
THOMAS P. NYE,
Executor for Estate of Sam'l Nelson, Dec'd.
JOHN BATEMAN.

MARY A. VINAL.
W. IRVING VINAL,
E. M. VINAL, *Att'y in Fact.*
JOHN R. BROWNHOLTZ.
E. S. McGLUE, Sr.
WILLIAM WILLIAMS.
WILLIAM WILLIAMS,
Executor for Estate of Chas. Williams, Deceased.
ROBT. C. WILLIAMS.
J. S. FISH.
J. S. FISH,
Executor for Estate of Israel L. Fish, Dec'd.
J. THORNTON WEAVER.
MATILDA HARE,
Administratrix of Thomas Hare, Dec'd.
HORATIO ROOP.
J. L. SLEEPER & SON.
GEO. MYERS.
JAMES DURNELL.
JABEZ S. LEWIS.
DAVID T. CLINGER,
T. J. CLINGER, *Att'y in Fact.*
MATTHEW WALKER.
WM. H. SHELMERDINE.
WM. H. SHELMERDINE,
Ex. of Rob't C. Shelmerdine, Dec'd.
SAMUEL B. ELY.
JOHN B. ELY.
MOYER HOMILLER.
THOS. F. SCATTERGOOD.
SCATTERGOOD & DUNLERY,
605 WILLIAM B. MOYLAN.
GEORGE M. HIGHLEY.
AARON S. DUNLERY.
C. VAN GUNDER.
R. F. SHARMAN.
W. E. HOEFLICH,
Ex. Est. of Geo. C. Hoeflick, dec'd.
GUSTAVUS GEISSERT.
WM. B. WHARTON.
A. H. PITCHELL.

UNITED STATES OF AMERICA, } *ss:*
Eastern District of Pennsylvania, }

Personally appeared before me, the undersigned, clerk of the United States circuit court in and for the eastern district of Pennsylvania, C. Edwin Wright, who, being duly sworn according to law, saith: That each and all of the persons whose signatures are appended to the above power or authority, are personally known to him, and that they, and each of them, signed the same in his presence.

(S'g'd) C. EDWIN WRIGHT.

Sworn and subscribed to before me, this 6th day of May, A. D. 1880.

[SEAL.] (S'g'd) SAMUEL BELL,
U. S. Com's'r and Clerk Cir. Ct. U. S., E. D. of Pa.

606 Endorsed: No. 124. Hare *et al.*, trustees, *vs.* Fairmount Gold and Silver Mining Co. *et al.* Power of attorney to Horace Castle. Filed May 13, 1880. S'g'd Edward F. Bishop, clerk. Horace Castle, solicitor for def'ts.

And afterwards and on, to wit, the 13th day of May, A. D. 1880, came again the said defendants, by Brown & Putnam, their solicitors, and filed in said court and in said cause the appearance of said company, and the said appearance is in words and figures, as follows, to wit:

Appearance for Defendants.

UNITED STATES OF AMERICA, }
Eighth Judicial Circuit, District of Colorado, } *ss:*

In the Circuit Court.

THOMAS HARE and JONATHAN H. PUGH, Trustees, &c.,
vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY, G. B. REED, *et al.*

607 And now come the defendant, The Fairmount Gold and Silver Mining Company, by John Russell, its president, and enters the appearance of the said company, defendant in said cause, and hereby waives the issue and service of the subpœna in chancery therein as to the said company.

(S'g'd) JOHN RUSSELL,
Pres't of Fairmount Gold and Silver Mining Company.

Feb'y 5th, 1880.

Endorsed: 124. Jonathan H. Pugh, trustee, &c., *vs.* Fairmount G. and S. M. Co. *et al.* Entrance of appearance. Ent'd C. O. B., page 175. Filed May 13, 1880. S'g'd Edward F. Bishop, clerk. Brown & Putnam, Denver.

And afterward and on, to wit, the same day, being the 13th day of May, A. D. 1880, came again the said defendants, by Horace Castle, Esq., their solicitor, and filed in said court and in said cause the appearance of said Horace Castle, on behalf of certain defendants, and the said appearance is in words and figures as follows, to wit:

608 *Appearance of Defendant.*

DISTRICT OF COLORADO, *ss:*

In the Circuit Court of the United States for the District of Colorado.

In re J. H. PUGH, Surviving Trustee, etc.,
vs.
THE FAIRMOUNT G. AND S. MINING COMPANY *et al.*
No. ——.

I do hereby certify that I have been retained by and appear in the above-cause for and in behalf of the Fairmount G. and S. Mining Company and Peter Miller, Ezra Pratt, Thomas P. Heyl, executor for estate of Sam'l Nelson, dec'd, John Bateman, May A. Vinal, W. Irving Vinal, E. M. Vinal, att'y-in-fact, John R. Brownholtz, E. S. McGlue, Sr., William Williams, William Williams, ex'r for estate of Chas. Williams, dec'd, Rob't C. Williams, J. S. Fish, J. S. Fish, ex'r for est. of Israel L. Fish, J. Thornton Weaver, Matilda Hare, adm'r of Thomas Hare, dec'd, Horatio Roop, J. L. Sleeper & Son, Geo. Myers, James Dunilly, Jabez S. Lewis, David T. Clinger, Matthew Walker, Wm. H. Shelmerdine, ex. of Robt. C. Shel- 609 merdine, dec'd; Samuel B. Ely, John B. Ely, Moyer Homiller, Thos. F. Scattergood, Scattergood and Dunlery, William B. Moylan, Geo. M. Highby, Aaron S. Donlery, C. Van Gunden, R. F. Shannon, W. E. Hoeflich, ex. est. of Geo. C. Hoeflich, dec'd; Gustavus Geisert, Wm. B. Wharton, and A. H. Dutchell.

(S'g'd) HORACE CASTLE, *Att'y.*

Dated at Denver, Colorado, this 13th day of May, A. D. 1880.

Endorsed: Gen. No. 124. Circuit court United States, district of Colorado. In the matter of Hare *et al.*, trustees, *vs.* Fairmount G. and S. M Co. *et al.* Attorney's appearance. Mr. Horace Castle on behalf of certain defendants. Filed May 13, 1880. S'g'd Edward F. Bishop, clerk.

And afterwards and on, to wit, the 13th day of May, A. D. 1880, the same being one of the regular juridical days of the May term, A. D. 1880, of said court—present, the Hon. Moses Hallett, district judge—the following proceedings was had and entered of record in said court and in said cause, to wit:

610 *Order Def'ts to Answer by 24th.*

THOMAS HARE and JONATHAN H. PUGH, Trustees,
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY, *et al.*
In chancery. For an account and other relief.

At this day came the complainants, by S. E. Brown, Esq., their solicitor, and thereupon, on motion of said complainants,

It is ordered that the said defendants, who this day appear herein, answer the bill of complaint herein on or before the 24th instant.

And afterwards and on, to wit, the 17th day of May, A. D. 1880, came again the said defendants, by Horace Castle, Esq., their solicitor, and filed in said court and in said cause the appearance of said Horace Castle, Esq., on behalf of certain defendants, and the said appearance is in words and figures, as follows, to wit:

Appearance for Def'ts.

611 UNITED STATES OF AMERICA,
District of Colorado, Eighth Judicial Circuit.

In the Circuit Court.

J. H. PUGH, Surviving Trustee, etc.,
vs.
THE FAIRMOUNT G. AND S. MINING COMPANY *et al.*

We, the undersigned defendants to the bill of complaint in the above-entitled cause, hereby authorize Horace Castle, Esq., of Denver City, Colorado, to appear in said court in our behalf and waive the issue and service of process and enter our appearance therein.

GEO. W. STULL,
Executor for the Estate of Samuel Arbuckle, Deceased.

UNITED STATES OF AMERICA, } *ss:*
Eastern District of Pennsylvania, }

Personally appeared before me, the undersigned, clerk of the United States circuit court in and for the eastern district of Pennsylvania, C. Edwin Wright, who, being duly sworn according to law, saith that the person whose signature is appended to the
612 above power or authority is personally known to him, and that he signed the same in his presence.

(S'g'd) C. EDWIN WRIGHT.

Sworn and subscribed to before me, this 11th day of May, A. D. 1880.

[SEAL.] (S'g'd) SAMUEL BELL,
Clerk Cir. C't U. S., E. D. of Pa.

Endorsed: No. 124. Circuit court. Appearance of Horace Castle for George W. Stull, executor of the estate of Samuel Arbuckle, dec'd. Filed May 17, 1880. S'g'd Edward F. Bishop, clerk.

And afterwards and on, to wit, on the 1st day of June, A. D. 1880, the same being one of the regular juridical days of the May term, A. D. 1880, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court, and in said cause, to wit:

Order Default vs. *Def'ts*

613 THOMAS PUGH and JONATHAN H. PUGH, Trustees,
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*
} In Chancery. For an account and other relief.

At this day come the said complainants, by S. E. Brown, Esq., their solicitor, and move the court for a decree *pro confesso* against the said defendants, the Fairmount Gold and Silver Mining Company, Peter Miller, Ezra Pratt, Thomas P. Hoyle, executor for estate of Sam'l Nelson, deceased; John Bateman, May A. Vinal, W. Irving Vinal, E. M. Vinal, att'y-in-fact; John R. Brownholtz, E. S. McGlue. Sr., William Williams, William Williams, executor for estate of Charles Williams, deceased; Robert C. Williams, J. S. Fish, J. S. Fish, executor for estate of Israel L. Fish; J. Thornton Weaver, Matilda Hare, administratrix of Thomas Hare, deceased; Horatio Roop, J. L. Sleeper and son, George Myers, James Dunnell, Jabez S. Lewis, David T. Clinger, Matthew Walker, Wm. H. Shelmerdine, Wm. H. Shelmerdine, executor of Robert C. Shelmerdine, deceased; Samuel B. Ely, John B. Ely, Moyer Homiller, Thomas F. Scattergood, Scattergood and Danlevy, William B. Moylan, George M. Highby, Aaron S. Doulery, C. Van Gunden, R. F. Shannan, W. E. Hoeflich, executor of estate of George C. Hoeflich, deceased; Gustavus Geissert, Wm. B.
614 Wharton, and A. H. Dutchell.

And the defendants aforesaid, still failing to plead, answer, or demur to the said complainants' bill of complaint herein, as by the order of the court they were required to do, therefore, it is ordered that the said bill of complaint, and the matters and things therein alleged, be taken as confessed against the defendants aforesaid.

Affidavit of Jonathan H. Pugh as to Power of Att'y to Castle.

And afterwards and on, to wit, the 12th day of June, A. D. 1880, there was filed in said court and in said cause a certain affidavit of Jonathan H. Pugh, Esq., and the said affidavit is in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
District of Colorado, Eighth Judicial District.

In the Circuit Court.

J. H. PUGH, Surviving Trustee, etc.,
vs.
THE FAIRMOUNT G. AND S. MINING COMPANY *et al.*

615 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *ss:*

Personally appeared before me, the undersigned, clerk of the

United States circuit court in and for the eastern district of Penna., Jonathan H. Pugh, who being duly sworn according to law, deposes and says, that Ezra Willetts, Thomas Nelson, and Samuel Bowers, are the only defendants in above case who have not signed the authority to Horace Castle, Esq., of Denver, Colorado, to appear in said court and waive the issue and enter appearance on their behalf. That said Ezra Willetts, deponent is informed and believes, is dead, and diligent search has failed to find any of his heirs or representatives.

That after diligent search and inquiry by deponent, and of others at his instance, the said Thomas Nelson, and the said Samuel Bowers, could not be found and their whereabouts are unknown.

(S'g'd) JOHN H. PUGH.

Sworn and subscribed to before me, this 6th day of May, A. D. 1880.

[SEAL.] (S'g'd) SAMUEL BELL,
U. S. Comm'r.

616 Endorsed: 124. Circuit court U. S. Jonathan H. Pugh, trustees, &c., *vs.* Fairmount G. and S. M. Co. *et al.* Affidavit of Jonathan H. Pugh, as to def'ts, Ezra Willetts, Thomas Nelson, Samuel Bowers. Filed June 12, 1880. S'g'd Edward F. Bishop, clerk. Brown & Putnam, Denver.

And afterwards and on, to wit, the 10th day of July, A. D. 1880, the same being one of the regular juridical days of the May term, A. D. 1880, of said court—present, the Hon. Moses Hallett, district judge—the following decree was had and entered of record in said court and in said cause, to wit:

Decree.

THOMAS HARE AND JONATHAN H. PUGH,
Trustees,
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY, Gilbert B. Reed, Theodore H. Lowe, Lorenzo M. Freas, and George M. Waters.

In Chancery.
For an account and other relief. From district court, Clear Creek county.

At this day come the said complainants, by S. E. Browne, Esq., their solicitor, and this cause having heretofore come on to 617 be heard by the court upon the pleadings herein, and the testimony and the briefs of the solicitors of the said complainants and defendants, and having been taken under advisement by the court, and the court being now sufficiently advised in the premises, it seemeth to the court that the equity herein is with the said defendants.

Wherefore it is considered by the court that this cause stand dismissed at the cost of the said complainants, to be taxed.

And thereupon the said complainants here, in open court, pray an appeal to the Supreme Court of the United States, which is allowed them, yet upon condition that within sixty (60) days from this day they file herein their bond in said appeal in the sum of five hundred dollars ($500.00), and conditioned according to law, and with sureties, to be approved by a judge of this court.

UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

I, Edward F. Bishop, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore filed or had and entered of record in said court, and in a certain cause lately in said court pending, wherein Thomas and Jonathan H. Pugh, trustees, &c., were complainants, and The Fairmount Gold and Silver Mining Company *et al.* were defendants, as fully and completely as the same still remain on file or of record in my office.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 19th day of October, A. D. 1880.

[SEAL.] EDWARD F. BISHOP, *Clerk.*

617½ *Clerk's Fees.*

Trans. 1,377 fol., at 10c.	$137 70
Certificate	35
	$137 05

Paid by Sam'l E. Brown.

618 Pleas in the Circuit Court of the United States for the District of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 26th day of March, A. D. 1881, came Messrs. Browne and Putnam, solicitors of this court, and filed in said court, and in the cause in said court, then pending, wherein Jonathan H. Pugh, surviving trustee, etc., was complainant, and the Fairmount Gold and Silver Mining Company and others were defendants, a certain affidavit as to value of property in controversy, and the said affidavit is in words and figures as follows, to wit:

Affidavit as to Value.

UNITED STATES OF AMERICA, *ss:*

In the Circuit Court, Eighth Judicial Circuit, District of Colorado.

JONATHAN H. PUGH, Surviving Trustee, etc.,
vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*
} In Chancery.

S. E. Browne, being duly sworn, says on his oath that he is one of the solicitors of record in said cause; that he knows the nature of the controversy involved in said cause, and that the said 619 bill was filed to foreclose a mortgage and for other relief, and that the sum of money demanded exceeds the sum of ten thousand dollars, and that the property involved is also of the value of $10,000.

(Sgd.) S. E. BROWNE.

Subscribed and sworn to before me, this 26th day of March, A. D. 1881.

[SEAL.] (Sgd.) EDWARD F. BISHOP, *Clerk.*
By F. W. TUPPER, *Deputy Clerk.*

Endorsed: 124. Circuit court U. S. Jonathan H. Pugh, surv. trustee, &c., *vs.* The Fairmount Gold and Silver Mining Co. *et al.* Aff't. Filed Mar. 26, 1881. S'g'd Edward F. Bishop, clerk. Brown and Putnam.

And afterwards and on, to wit, the 8th day of June, A. D. 1881, the same being one of the regular juridical days of the May term, A. D. 1881, of said court—present, the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to the eighth judicial circuit, and the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

620 JONATHAN H. PUGH, Trustee,
vs.
FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*
In Chancery. For an Account, and other Relief.

At this day comes the said complainant by S. E. Brown, Esq., his solicitor, and prays an appeal to the Supreme Court of the United States, which is allowed him.

And afterwards and on, to wit, the 9th day of June, A. D. 1881, came again the said complainant, by his solicitor aforesaid, and filed in said court and in said cause his bond on appeal, and the said bond is in words and figures as follows, to wit:

621 Know all men by these presents, that we, Jonathan H. Pugh, surviving trustee, &c., as principal, and Charles Edwin Wright, as surety, are held and firmly bound unto Gilbert B. Reed, Theodore H. Lowe, Lorenzo M. Frees, George H. Waters, Peter Miller, Ezra Pratt; Thomas P. Heyl, exc. of the estate of Samuel Nelson, dec'd; John Bateman; May A. Vinal; W. Irving Vinal, E. M. Vinal, att'y-in-fact; John R. Brownholtz, E. S. McGlue, Sr.; William Williams; William Williams, exc. of the estate of Charles Williams, dec'd; Robert C. Williams, J. S. Fish; J. S. Fish, exc. of the estate of Israel L. Fish; J. Thornton Weaver; Matilda Hare, adm'r of Thomas Hare, dec'd; Horato Roop, J. L. Sleeper & Son,

George Myers, James Durnill, Jabez S. Lewis, David T. Clinger,
Matthew Walker, William H. Shelmerdine; William H. Shelmer-
dine, exc. of Robert C. Shelmerdine, dec'd; Samuel B. Ely, John
B. Ely, Moyer Homiller, Thomas F. Scattergood, Scattergood &
Dunlevy, William B. Morgan, George M. Higby, Aaron S.
622 Dunlevy, C. Van Gunden, R. F. Shannen; W. E. Hoeflich,
exc. of the estate of Geo. C. Hoeflich, dec'd; Gustavus Geisert,
William B. Wharton, A. H. Dutchell; and George W. Stall, ex'r;
of the estate of Samuel Arbuckle, dec'd, in the full and just sum of
five hundred dollars, to be paid to the said obligees above-named,
to which payment, well and truly to be made, we bind ourselves,
our heirs, executors, and administrators, jointly and severally,
firmly by these presents. Sealed with our seals and dated this fifth
day of May, in the year of our Lord, one thousand eight hundred
and eighty-one. Whereas, lately at the May term, A. D. 1880, of
the circuit court of the United States for the district of Colorado
in a suit pending in said court between the said Jonathan H.
Pugh, surviving trustee, &c., as plaintiff, and the said Gilbert
B. Reed, Theodore H. Lowe, Lorenzo M. Frees, George H.
Waters, Peter Miller, Ezra Pratt; Thomas P. Heyl, exc. of
the estate of Samuel Nelson, dec'd; John Bateman; Mary A.
Vinal, W. Irving Vinal, E. M. Vinal, att'y-in-fact; John
623 R. Brownholtz, E. S. McGlue, Sr., William Williams;
William Williams, exc. of the estate of Charles Williams'
dec'd; Robert C. Williams, J. S. Fish; J. S. Fish, exc. for estate of
Israel L. Fish, dec'd; J. Thornton Weaver; Matilda Hare, adm'x
of Thomas Hare, dec'd; Horatio Roop, J. L. Sleeper & Son, George
Myers, James Durnill, Jabez S. Lewis, David T. Clinger, Matthew
Walker, William H. Shelmerdine; William H. Shelmerdine, exc.
of Robert C. Shelmerdine, dec'd; Samuel B. Ely, Moyer Horniller,
Thomas F. Scattergood, Scattergood & Dunlevy, William B. Moy-
ean, George M. Higly, Aaron S. Dunlevy, C. Van Gunden, R. F.
Shannan; W. E. Hoeflich, exc. of the estate of George C. Hoeflick,
dec'd; Gustavus Geisert, William B. Wharton, A. H. Dutchell;
George W. Stull, ex. of the estate of Samuel Arbuckle, dec'd, de-
fendants' judgment was rendered against the said Jonathan H.
Pugh, surviving trustee, &c., and the said Jonathan H. Pugh, sur-
viving trustee, &c., having prayed an appeal of the said court
624 to reverse the judgment in the aforesaid suit and a citation
directed to the defendants therein, citing and admonishing
them to be and appear at a Supreme Court of the United States,
to be held at Washington, on the ——

Now, the condition of the above obligation is such that if the Jonathan H. Pugh, surviving trustee, &c., shall prosecute said appeal to effect and answer all damages and costs, if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

(Signed) JONATHAN H. PUGH, [SEAL.]
(Signed) C. EDWIN WRIGHT. [SEAL.]

Signed, sealed, and delivered in the presence of—
(S'd) SAMUEL BELL,
Clerk U. S. Cir. C't, E. D. of Pa.

I approve this bond, June 9, 1881.
(S'd) SAM. F. MILLER, *Judge.*

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *ss:*

625 Be it remembered that on the fifth day of May, A. D. 1881, before me, Samuel Bell, clerk of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, personally appeared the above-mentioned Jonathan H. Pugh and Charles Edwin Wright, and acknowledged the foregoing to be their act and deed.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said circuit court, at Philadelphia, the 5th day of May, A. D. 1881, and the Independence of the United States the one hundred and fifth.

[SEAL.] (S'g'd) SAMUEL BELL, *Clerk, &c.*

UNITED STATES OF AMERICA,
Eastern District of Penna., } *ss:*

Charles Edwin Wright, being duly sworn, deposes and says, I reside in the city of Philadelphia, State of Pennsylvania, at No. 714 Spring Garden St.; I am engaged in the manufacture of Wright's Ne Plus Ultra Mince Meat; I consider myself worth more than two thousand dollars over and above all my debts and liabilities.

(Signed) CHARLES EDWIN WRIGHT,

626 Subscribed and sworn to before me, this 10th day of May, A. D. 1881.

[SEAL.] (Signed) SAMUEL BELL,
U. S. Com'r.

Endorsed: 124. Circuit court U. S. Thomas Hare, Jonathan H. Pugh, trustees, *vs.* Fairmount Gold and Silver Mining Co. Appeal bond. Filed June 9, 1881. S'd Edward F. Bishop, clerk.

And afterwards, and on the same day, to wit, the 9th day of June, A. D. 1881, came again the said complainant, by his solicitors as aforesaid, and left with the clerk a citation in appeal in said court and in said cause, and the said citation is next hereto attached, to wit:

627 *Citation.*

THE UNITED STATES OF AMERICA, *District of Colorado.*

The United States of America to the Fairmount Gold and Silver Mining Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the tenth day of October next, in pursuance to an appeal filed in the clerk's office of the circuit court of the United States for the district of Colorado, wherein Thomas Hare and Jonathan H. Pugh, trustees, are appellants, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said appellants should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, judge of the Supreme Court of the United States for the district of Colorado, this 9th day of June, in the year of our Lord one thousand eight hundred and eighty-one.

SAM. F. MILLER, *Judge.*

628 *Proof of Service.*

THE UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

On this 9th day of June, A. D. 1881, personally appeared Thomas G. Putnam, before me, the subscriber, a clerk of the circuit court of the United States, for the district of Colorado, and makes oath that he delivered a true copy of the within citation to Gilbert B. Reed, by leaving a true copy of the same with a clerk at his office, in the city of Denver, and personally on Horace Castle, by delivering him a true copy; also, on George Russell, (a stockholder in defendant's company,) in the absence of any of the officers of said corporation, the same being a foreign corporation.

THOMAS G. PUTNAM.

Subscribed and sworn to before me, this 9th day of June, A. D. 1881.

EDWARD F. BISHOP, *Clerk.*
F. W. TUPPER, *Deputy Clerk.*

Endorsed: Gen. No. —. Circuit court of the United States, district of Colorado. Thomas Hare and Jonathan H. Pugh, plaintiffs in error, *vs.* the Fairmount Gold and Silver Mining Company, defendants in error. Citation.

629 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

I, Edward F. Bishop, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the affidavit as to value, order on appeal, appeal bond, and citation heretofore had and entered of record or filed in said court and in a certain cause lately in said court pending, wherein Jonathan H. Pugh, trustee, was complainant and the Fairmount Gold and Silver Mining Company *et als.* are defendants, as fully and completely as the same still remain of record or on file in my office.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 14th day of June, 1881.

[SEAL.] EDWARD F. BISHOP, *Clerk.*

Clerk's Fees.

Transcript, 20 fols., @ 10c	$2 00
Certificate	35
	$2 35

Paid by Russell & Russell.

Endorsed on cover: Colorado C. C. U. S. No. 328. Jonathan H. Pugh, surviving trustee, &c., appellant, *vs.* The Fairmount Gold and Silver Mining Company, Gilbert B. Reed, *et al.* Filed 4th October, 1881.

112-238

Office Supreme Court U. S.
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IN THE

Supreme Court of the United States.

October Term, 1884.

No. 36.

JONATHAN H. PUGH,
Surviving Trustee,
Appellant,

vs.

THE FAIRMOUNT GOLD AND SILVER
MINING COMPANY, *et al.*,
Appellees.

JOHN W. ROSS,
MILLS DEAN,
Counsel for Appellant.

WASHINGTON, D. C.:
R. O. POLKINHORN & SON, PRINTERS,
1884.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

JONATHAN H. PUGH SURVINIVG TRUSTEE,
Appellant,

vs.

THE FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*, *Appellees.*

No. 36.

Statement of the Case.

The bill, to foreclose a mortgage was filed in the District Court of Clear Creek county, in the Territory of Colorado, on the 26th day of November, 1875, and having been lost from the files, it was supplied by a copy filed August 16, 1877, by agreement of parties. (7–10.) The mortgage was executed by the defendant, the Fairmount Gold and Silver Mining Company (hereinafter designated as the Mining Company) to Thomas Hare and Jonathan H. Pugh to secure a bond dated August 22, 1870, conditioned to be void on the payment by the Mining Company of $17,000 to said Hare and Pugh one year after date, with interest at six per cent. per annum, payable half yearly in gold. (3, 4, 5.) The mortgage was recorded in the county of Clear Creek, Colorado, where the land was situated, on the 30th day of August, 1870. (7.) The plaintiffs were residents of Pennsylvania, where the Mining Company was incorporated.

The defendant, John W. Thackara, had been superintendent of the mine and general agent of the Mining Company in Colorado, and was a stockholder. He held by purchase some of the certificates of indebtedness secured by the mortgage issued to other parties, and held other notes issued subsequent to the mortgage to himself for salary, &c. Prior to the institution of the foreclosure proceedings, to-wit.: on the 22d day of March, 1873, Thackara began suit against the Mining Company on said notes and a book account, caused a writ of attachment to be issued against the Mining Company, and on the 13th day of January, 1875, recovered a judgment for \$23,442 $\frac{12}{100}$. (228.) Upon a sale under execution of this judgment all the real and personal property of the Mining Company was sold to Thackara for a total sum of \$24,873.01 (232), and he assigned the certificate of purchase to his attorney of record, G. B. Reed, to whom a sheriff's deed was executed December 15, 1875. (234.)

It was stipulated August 16, 1877, that said Reed had succeeded to all the rights and interests of Thackara. The bill was dismissed as to Thackara and Reed substituted as defendant. (10–11.)

A decree *pro confesso* was entered against the Mining Company, Lowe and Freas, August 16, 1877 (11.)

A petition for the removal of the cause to the United States Circuit Court was filed by the complainant (13), and an order was passed transmitting the record to said court (16).

The amended bill filed May 6, 1878 (37), alleged that the Mining Company was, on the 22d August, 1870, indebted to various persons upon promissory notes bearing date from August 5, 1868, to May 19, 1870 (37, 38, 39), aggregating in amount \$16,323.05; that said notes were executed and delivered for a valuable consideration received by the Mining Company, and that all bore interest at six per cent. payable in gold (40). That to secure said indebtedness and none other the company executed a bond for \$34,000 to the complainants as trustees, conditioned to be void upon payment of $17,000 in one year, with interest at six per cent. payable half yearly in gold. That to secure the payment of said bond the Mining Company executed a mortgage to complainants, August 22, 1870, which was delivered and afterwards recorded, August 30, 1870 (40, 41). That the whole sum of $17,000 and interest was due and unpaid; that no proceedings at law had been had to recover the debts; that the Mining Company was insolvent; and that the mortgaged premises were scant security for the debt. That John W. Thackara (then deceased), Theodore H. Lowe, Geo. M. Freas, Gilbert B. Reed, of Colorado, and George W. Waters, of Philadelphia, claimed some interest in the mortgaged premises as judgment creditors or otherwise, which interests accrued subsequent to the mortgage and subject thereto (41). The bill waives answers under oath: prays on account; that the defendants or some of them be decreed to pay the sum found due the complainants, and that in default of such payment the property be sold under foreclosure, &c. (41, 42).

The answer of Gilbert B. Reed to the amended-bill (47), admits the Mining Company's indebtedness to divers parties in small sums of money; but denies that it amounted to $17,000; admits the execution of the bond and mortgage, but avers that they were made to secure divers sums then owing, and certain debts thereafter to be contracted (47). That the debts then due and afterwards contracted were evidenced by negotiable notes, of which four, aggregating $11,839.50, were delivered to John W. Thackara, ten aggregating $2,822.35 to Abram C. Brown, one for $20 to J. P. Harker, and one for $100 to Swain Thackara, all of which were endorsed to John W. Thackara (48). That the aggregate amount of these notes was $14,781.85. That Thackara as such holder commenced a proceeding by attachment in the District Court of Clear Creek County, March

22, 1873; that the Mining Company appeared by counsel and defended the same, and that at the December Term of said court 1874, a judgment was obtained by Thackara against the Company for $24,643 (49), of which sum $17,968.67 was for money due upon said promissory notes. That the property described in the mortgage was all sold March 13, 1875, under an execution issued upon said judgment, and that the same was purchased by Thackara. That Thackara assigned his certificate of purchase to Reed to whom the sheriff executed a deed December 15, 1875. That none of the notes described in the bill were due and owing except the notes sued on at law, a note to Samuel Wilson, dated August 5, 1868, for $150, another note to said Wilson, dated May 19, 1870, for $25, and a note to Wm. B. Wharton, dated August 13, 1868, for $100, and that all the other notes described in the amended bill had been paid and taken in by the Company (50).

That all the notes sued on were intended to be secured by the mortgage (50). That complainants had full notice of the suit at law, but did not claim any right as trustees or otherwise, and filed their bill long after said sale. That complainants were not asked to prosecute the suit by the holder of any claim intended to be secured by the mortgage (51), and that all unpaid debts intended to be secured had been prosecuted and recovered at law.

A replication was filed June 13, 1878 (52).

Testimony in behalf of complainants was taken (61–155). The transcript of the record in the cause at law was filed as evidence for both parties by stipulation (156), and it was a part of the stipulation, as an agreed fact, that the defendant Reed was the attorney who instituted the suit at law for Thackara, and to whom Thackara assigned the certificate of purchase. The transcript of the record in the cause at law extends from p. 156 to p. 235.

On the 23d December, 1878, complainants filed a certified copy of the articles of incorporation of the mining company (235, 236). Testimony was taken in behalf of defendants (242–252). Depositions on behalf of complainants was filed March 3d, 1879 (254–257). On May 12, 1879, the death of Thomas Hare, one of the complainants, was suggested (263).

At the hearing of the cause, Jan'y 5, 1880, the relief prayed by the bill was denied for want of proper parties complainant (295), and leave was given to the complainants to amend their bill (296).

Afterwards, on the 14th day of April, 1880, an amended bill was filed, making the various holders of the notes, described in the bill of complaint, parties defendant (296, 297), who appeared by attorney (298–300) May 13, 1880. A decree *pro confesso* was entered against them June 1, 1880 (302), and on the 10th day of July, 1880, a final decree was passed dismissing the bill at complainant's cost (303) Whereupon the complainant prayed an appeal to the Supreme Court of the United States, and the same was allowed (305).

Assignment of Errors.

It is difficult to comply with the rule requiring a specification of the points in which the decree below was erroneous, inasmuch as the opinion of the court is not in the record. It is inferred, from the brief filed by the defendant below, and printed in the record, that the principal points relied upon against the relief prayed by the bill were—

1. That the officers of the Mining Company were not duly authorized to execute the mortgage; and,

2d. That the debt secured had been paid and satisfied.

It is claimed that the dismissal of the bill upon either ground was erroneous, and that the complainants were entitled to the relief prayed.

Argument.

No issue is made by the answer with regard to the execution, delivery, and record of the mortgage, the amount of the bond, or the good faith of the debts intended to be secured. These are in effect admitted by the answer (47). The following testimony of W. H. Shelmerdine was taken on the part of the defendant (243): "At or about the time this bond and mortgage were made, certain bonds or certificates of indebtedness were issued by the company to certain persons for various amounts, from ten dollars up to and over one thousand dollars. * * For these certificates of indebtedness or bonds the persons who took them paid cash therefor to the full amount to the treasurer of the company; they purchased these bonds outright for the purpose of putting money into the treasury of the company; all the bonds that were issued were taken in that way—that is, cash was paid for them to the company. About $17,000 worth of bonds were issued in this way—that is, the people paid the cash into the treasury of the company." And no testimony taken by the defendant tends to throw the least discredit upon the good faith of the transaction.

I.

The Authority to Execute the Bond and Mortgage.

Nothing contained in the pleadings can be construed as constituting an issue with regard to the power and authority of the officers of the Mining Company to execute the bond and mortgage. Had such a question been raised by the answer, it must have been decided that the officers were clothed with the power. The act of incorporation (235) rendered the Mining Company capable "of granting and receiving in its corporate name property, real, personal and mixed, and of holding and improving lands in Colorado Territory, * * and to * * dispose of the property of all such lands, mines, and works as they may deem proper." At a meeting of the stockholders, they by their vote authorized the directors "to raise money for the completion of our works in Colorado by bond and mortgage, as they may deem best" (138). At a meeting of the board of directors and bondholders, the directors were authorized to have the bond and mortgage drawn, on the motion of Swain Thackara, the brother of John W. Thackara, defendant below (138), and the mortgage sought to be foreclosed was executed thereafter to secure money borrowed "for the further improvement and development of our property in Colorado" (139). "It is now regarded as settled beyond any proper ground of question, that a corporation may contract debts necessary for the accomplishment of the purposes of its creation, and may give valid security for their payment by pledge or mortgage of any property or interest in property that are subject to be disposed of by virtue of the implied power existing in it, and without any express provision of statute to that effect, provided it be not restricted by statute to that effect."

Miller vs. *R. & W. R. R. Co., 36 Vermont, 473;*
Jones on Mortgages, sec. 124.

Instead of denying the validity of the mortgage or the authority to execute it, the defendant, Reed, claims in his answer that he represents the debt secured by the mortgage; that it was intended to provide security for debts thereafter to be contracted by said company (47), and that John W. Thackara, whose interests became vested in Reed, held notes executed before and after the execution of the mortgage amounting to $14,781.85 (48). He admits that some of the notes held by other parties were also secured by the mortgage, and that they were due and unpaid, and he offers to pay "whatever sums of money may be due and owing to them" (50). He claims "that each and every of the said notes upon which suit (at law by Thackara) was brought, as hereinbefore stated, was secured by said bond and mortgage" (50), "and that all, or nearly all, of the debts that remained unpaid, intended to be secured by said bond and mortgage, have been prosecuted and recovered at law."

It cannot be worth while to discuss at length a question clearly waived by the pleadings.

II.

Did the Debts Provided for by the Bond for $17,000 Amount to that Sum?

The mortgage prayed to be foreclosed secured, according to its terms, a bond for $34,000, conditioned for the payment of $17,000 to Pugh and Hare, trustees. (42–43.) It is not claimed that this bond was ever surrendered or discharged. It remained in the possession of the trustees (73), was offered in evidence, and filed with the commissioner. (131–132.) The bill alleges the sum named in the bond to be due and unpaid. It contains, also, a list of the individual debts, to secure which the trust was created.

The answer (47) admits the execution and delivery of the bond and mortgage, and that the Mining Company "was indebted to divers parties in small sums of money, but denies that the same amounted to $17,000, or near that sum."

Upon this issue the proof sustains the allegation of the bill. The schedule of debts intended to be secured is found upon pages 145, 146, 147, with the names of the persons to whom the debts were due, the dates when they became due, and their amounts. Six witnesses testified to the accuracy of this schedule, to wit.: Jonathan H. Pugh (61), Thomas Hare (74), John Russell (85–86), Alfred Smith, director and secretary of the Mining Company (95); J. S. Fish (104), and Thomas J. Clinger (121).

All were given for money borrowed by the company prior to the execution of the bond and mortgage. See answer of Pugh to interrogatory 17 (p. 66), of Hare to int. 7 (74) and 17 (78) of Smith (98), of Fish (104–109), and of Clinger (121–124).

The schedule of debts so established by proof, shows an indebtedness of $16,387.05 (147), and when the bond and mortgage were executed, interest for a large amount must have been due upon these debts. No attempt was made to impeach the validity or good faith of the original loan and security, and upon this issue the averment of the bill is sustained by the proof.

III.

Were debts created subsequent to the date of the mortgage intended to be secured?

Another issue is tendered by the answer, which, although it could not defeat the right to foreclosure, tends to mislead the court in and by the allegations following (47): "And the said bond or writing obligatory was made * * * to secure divers sums then due and owing, and to secure the payment of certain debts thereafter to be contracted, the aggregate amount of all such indebtedness not to exceed the sum of said $17,000."

The answers to direct interrogotary 8, and cross-interrogatory 3, by Pugh (62–71), Hare (74–83), Russell (86–93), Smith (95–101), Fish (104–113), and of Clinger (127), prove that only existing indebtedness was intended to be secured, (the certificate to Brownholz, dated Dec. 2, 1870, being for money loaned prior to the date of the mortgage.) (126.) Nothing in the record contradicts the testimony above referred to.

IV.

Were all the notes sued on at law by Thackara intended to be secured by the mortgage?

The answer of Reed contains an averment that all of the notes held by Thackara, and sued on at law, were secured by the bond and mortgage (50).

There is no proof in the record which even tends to sustain the allegation.

The suit at law was upon notes issued by the Mining Company, as follows (165–169):

Note	to	John W. Thackara,	dated	May 3, 1872.........	$20 00
"	"	"	"	Ap'l 3, 1872.........	30 00
"	"	"	"	Ap'l 17, 1872.........	1,789 50
"	"	"	"	Dec. 13, 1871.........	10,000 00
"	to	Swain Thackara,	"	Ap'l 12, 1869.........	100 00
"	"	Jno. P. Harker,	"	May 17, 1869.........	20 00
"	"	A. C. Brown,	"	Aug. 5, 1868....... .	250 00
"	"	"	"	" " "	333 32
"	"	"	"	July 6, 1869.........	183 33
"	"	"	"	Oct. 9, 1869.........	680 00
"	"	"	"	Mch. 31, 1870.........	350 69
"	"	"	"	Mch. 26, 1872.........	15 00
"	"	"	"	Ap'l 30, 1872.........	60 00
"	"	"	"	May 24, 1872.........	25 00
"	"	"	"	July 2, 1872	190 00
"	"	"	"	Aug. 15, 1872.........	500 00
"	"	"	"	Aug. 28, 1872.........	250 00
					14,791 84

Of these the only ones secured by the mortgage were the following:

A. C. Brown,	August 5, 1868....................	250 00
"	March 2, 1869....................	333 33
"	July 6, 1869....................	183 33
"	Oct. 9, 1869....................	680 00
"	March 31, 1870....................	350 69
Swain Thackara,	April 12, 1869....................	100 00
J. P. Harker,	May 17, 1869	20 00
		$1,917 35

See page 150, and testimony of Pugh (61, 62, 67), Exhibit K (p. 145), and Exhibis M and N (pp. 147, 148), also testimony of Hare (74, 78), of Russell (91), of Smith (95, 99), of Fish (104, 105, 108), and of Clinger (121, 122).

No testimony taken by defendants below tends to show that any other notes sued on at law were intended to be secured by the mortgage. In the deposition of Alfred Smith, taken on the part of defendants (249), the statement is as follows: "The back salary bonds referred to amounting, to $11,789.50, were issued to John W. Thackara subsequent to the bond and mortgage, and were not intended to be secured." They were the notes above scheduled of $1,789.50, dated April 17, 1872, and of $10,000, dated December 13, 1871.

V.

The notes secured by the mortgage were not paid and taken in by the Mining Company.

It is alleged in the answer upon information that all of the notes and bonds scheduled in the amended bill had been paid and taken in by the Mining Company, except the notes reduced to judgment in the suit at law, and three other notes aggregating $275 (49, 50).

In order to give the court a clear understanding of the facts on which the pretence of notes "paid and taken in" was based, the history of the Mining Company, as shown by the record, is briefly reviewed. From August 1867, to February, 1869, Swain Thackara had been the general agent of the Company in Colorado upon a salary of $5,000 per annum, of which $100 was to be paid monthly and the balance when the profits of the Company would guarantee the payment. When he resigned in February, 1869, John W. Thackara was elected general agent upon the same conditions (187, 188, 190, 191, 193, 194, 196). Thackara himself so stated the contract to Pugh and Russell (197, 201), Certificate No. 88 for $1,789.50, dated April 17, 1872, and Certificate No. 108 for $10,000, dated December 13, 1871, sued on at law, were issued to Thackara upon the agreement and understanding that only $100 per month should be paid to him until the profits of the Company should guarantee their payments. Testimony of Alfred Smith (203, 204).

Thackara was in Philadelphia in March, 1871, and was told all about the mortgage, securing borrowed money and had free access to the books of the Company. He was a stockholder (109), and was one of the original incorporators (235). See answer to Int. 17 (66, 78, 90, 98, 108, 109, 124). On April 17, 1872, a written contract for his services was made between him and the Mining Company for one year for $5,000 as salary, of which he was to receive $150 per month only, until the Company should be in condition to pay dividends. (See contract 219, 220.) It appears that this contract was annulled by the act of Thackara in voluntarily abandoning the works and business of the Company in Colorado (195, 199, 202, 205).

It appears, further, that Thackara left Colorado for Philadelphia on the 19th or 20th of December, 1872 (206), and remained in Philadelphia about two months (189, 191, 194). Mr. Pugh testifies that he remained in Philadelphia during the months of January, February, March, and April, 1873 (197, 198).

The record discloses the fact that, down to June, 1873, the Mining Company had realized no profit whatever (189, 191, 194, 197, 201, 204, in answer to the 10th int.)

In this state of affairs, with the works abandoned by the superintendent, and with evident ill feeling on Thackara's part toward the company, it seems that an effort was made to relieve the Mining Company from its mortgage debt, provided that the whole of it could be extinguished.

On February 8th, 1873, at a meeting of the directors of the Mining Company, it was

> "*Resolved*, That the board of directors authorize the conversion of certain outstanding and unpaid certificates of indebtedness of the Fairmount Gold and

> Silver Mining Company, being numbered from 1 to 87, both numbers inclusive, and No. 89 to 100, both numbers inclusive, into stock of the said company, at the par value thereof, upon the surrender of the said certificates of indebtedness by the holders thereof; *Provided*, that the holders of the said certificates of indebtedness convert the same into stock of the said company, at the par value thereof, within ten days from the date of the passage of this resolution, *and all the holders convert*" (153).

In a month and twelve days after the passage of this resolution, to wit, on the 22d of March, 1873, Thackara sued the company in Colorado for $21,902.06, and attached all its property (157). His attorney was Gilbert B. Reed, now appellee in this cause. The property attached, afterwards sold under execution, bid in by Thackara, and deeded to Reed, was the entire estate of the company, and was the property mortgaged in 1870 to appellant and his co-trustees. Of the 99 certificates, all of which were required to be converted before the exchange could have any validity, only the following were surrendered:

No.			
3	Matthew Walker,	Aug. 5, 1868	$50 00
4	Jacob S. Fish,	“ “ “	100 00
6	Thomas Hare,	“ “ “	220 00
8	William Williams,	“ “ “	20 00
9	Horatio Roop,	“ “ “	80 00
10	J. H. Pugh,	“ “ “	50 00
11	G. Geissert,	“ “ “	100 00
12	Peter Miller,	Aug. 6, 1868	200 00
14	J. T. Weaver,	Aug. 7, 1868	20 00
15	John Bateman,	Aug. 11, 1868	25 00
18	A. H. Pritchett,	Jan. 18, 1869	70 00
19	George Myers,	Jan. 29, 1869	10 00
21	Myers Homiller,	Feb. 3, 1869	10 00
22	John R. Brownholz,	Feb. 22, 1869	50 00
23	Peter Miller,	“ “ “	100 00
24	Thos. F. Scattergood,	Feb. 23, 1869	15 00
25	Edward S. McGlue,	Feb. 24, 1869	20 00
26	C. Van Gunden,	Feb. 27, 1869	10 00
27	R. C. Shelmardine,	“ “ “	50 00
28	Wm. B. Moylan,	“ “ “	20 00
29	George M. Highley,	“ “ “	20 00
30	Wm. H. Shelmardine,	Mch. 2, 1869	100 00

31	Thomas Hare,	Aug. 5, 1868	333 34
33	J. S. Fish,	“ “ “	333 33
35	W. H. Shelmardine,	Mch. 26, 1869	250 00
36	J. H. Pugh,	“ “ “	250 00
37	Thomas Hare,	Mch. 29, 1869	250 00
38	Peter Miller,	“ “ “	50 00
39	J. L. Sleeper & Son,	Apl. 3, 1869	15 00
40	A. S. Dunlery,	Apl. 12, 1869	15 00
42	Ezra Wille s,	Apl. 17, 1869	100 00
45	Matthew Walker,	May 31, 1869	50 00
46	Samuel B. Ely,	June 18, 1869	80 00
47	John B. Ely,	“ “ “	70 00
49	J. H. Pugh,	July 9, 1869	333 33
50	Thomas Hare,	“ “ “	666 67
51	Mary A. Vinal,	July 15, 1869	100 00
52	Matthew Walker,	July 24, 1869	133 33
53	J. L Fish,	Aug. 28, 1869	15 00
54	Peter Miller,	Aug. 30, 1869	200 00
55	John R. Brownholz,	Sept. 9, 1869	30 00
56	J. H. Pugh,	Sept. 20, 1869	133 33
57	Thomas Hare,	Sept. 28, 1869	333 33
59	Thomas Hare,	Oct. 19, 1869	66 67
60	J. H. Pugh,	“ “ “	66 67
61	W. H. Shelmardine,	“ “ “	10 00
62	Thomas Hare,	Nov. 16, 1869	1,333 34
63	J. H. Pugh,	Feb. 4, 1870	133 33
64	Thomas Hare,	“ “ “	266 67
65	Thomas Hare,	Feb. 24, 1870	368 00
66	J. S. Fish,	“ “ “	368 40
67	J. R. Brownholz,	Mch. 8, 1870	66 67
69	Peter Miller,	“ “ “	450 00
69½	David T. Clinger,	“ “ “	66 67
70	Thomas Hare,	Mch. 9, 1870	266 67
71	J. H. Pugh,	Mch. 11, 1870	333 33
72	Scattergood & Dunlery,	Mch. 12, 1870	66 67
74	Robert C. Williams,	Mch. 15, 1870	133 33
75	Charles W. Williams,	“ “ “	66 67
77	Wm. H. Shelmardine,	May 4, 1870	1,333 34
79	Jabez Lewis,	May 20, 1870	266 66
80	James Durnell,	May 21, 1870	80 00
81	George C. Hoefflick,	“ “ “	10 00
82	Ezra Pratt,	“ “ “	100 00
83	Horatio Roop,	“ “ “	66 67
84	Matthew Walker,	May 23, 1870	25 00
85	John Bateman,	May 24, 1870	66 67
86	Ezra Willetts,	“ “ “	25 00
87	R. C. Shelmardine,	June 21, 1870	66 67

The above list is an exact copy of Exhibit S. (pp. 153, 154, 155), with the addition of the numbers of the same certificates corresponding in names, dates and amounts, as shown by Exhibit E (pp. 140, 141). (The footing, $9,426.52 is erroneous. The list given on pp. 148, 149, 150, is identical with the above, except that the latter contains notes of Samuel Nelson, Aug. 5, 1868, $150, and May 9, 1870, $25, while the total footing of the latter (150) is $11,525.52.)

This list of debts conditionally exchanged, is sworn to as correct by Pugh (72), Hare (84), Russell (94), Smith (102), and Fish (115).

From it, it is evident that while the resolution required all certificates from 1 to 87, both inclusive, and from 89 to 100, both inclusive, to be surrendered as a condition precedent to the conversion, yet, of the first-named numbers, from 1 to 87, nineteen were not presented for the conditional exchange, to wit: Nos. 1, 2, 5, 7, 13, 16, 17, 20, 32, 34, 41, 43, 44, 48, 58, 68, 73, 76, 78.

The record does not contain a list by numbers of the certificates numbered from 89 to 100. But the record of the suit at law brought by Thackara shows that the following numbered certificates were sued on by him:

No.			
2	A. C. Brown,	Aug. 5, 1868	$250 00
32	A. C. Brown,	Mch. 2, 1869	333 33
43	Swain Thackara,	Ap'l 12, 1869	100 00
46	John P. Harker,	May 17, 1869	20 00
48	A. C. Brown.	July 6, 1869	183 33
58	A. C. Brown,	Oct. 9, 1869	680 00
76	A. C. Brown,	Mch. 31, 1870	350 00
			1,917 35

See pp. 222, 223, 224.

Other certificates not surrendered were:

No.			
1	W. B. Wharton,	Aug. 5, 1868	100 00
5	Samuel Nelson,	" " "	150 00
16	Samuel Bowers,	Aug. 20, 1868	10 00
34	Thomas Nelson,	Mch. 26, 1869	100 00
43	Samuel Nelson,	May 19, 1869	25 00
44	R. F. Shannon,	" " "	50 00
	Showing a total of unexchanged notes of		$2,352 35

With certificates Nos. 7, 13, 17, 41, 68, 73, and 78, of the list on pp. 140, 141 still unaccounted for, and certainly not exchanged, It must be apparent that the purpose of the resolution of Feb. 8, 1873, was to make such an arrangement with the Mining Company's note-holders as to avoid suit. That could have been accomplished only by the exchange of all outstanding certificates. But when the holders of certificates aggregating $2,352.35 declined to convert—when suit was brought upon $1,917.35 in value of them, and all the property of the company, real and personal, was attached upon an alleged claim of more than $21,000, it would have been the height of folly on the part of both the Mining Company and the mortgage creditors to have consummated the exchange.

The certificates so conditionally exchanged were, by the mutual consent of all the parties concerned, redelivered to the trustees for the holders. In a deposition taken for defendant (246), J. S. Fish was reported as testifying that he had sold part of the stock temporarily received in exchange. But in a subsequent deposition (255) he states:

> " This conversion was done under the provisions and conditions of the resolution of the board of directors, which I well knew at the time of the conversion, and which provisions and conditions are, that the conversion is to be binding only in the event that all the holders of bonds secured by the mortgage convert them into stock of the company, and that the conversion of all stock take place in ten days from the date of the resolution. I never sold any part of the stock which I received in exchange for my bonds. The stock which I refer to in my deposition before Mr. Tindal as having been sold by me was stock which I owned long before the conversion of my bonds into stock under the resolution."

He adds:

> "On the 11th day of February, 1873, I converted my bonds which were secured by the mortgage, and left the bonds in custody of the company. I found very soon thereafter that all the holders of bonds secured by the mortgage did not convert their bonds

> into stock, and I demanded my bonds from the president of the company, and he directed the secretary in my presence to deliver them to me. The trustees, Thomas Hare and Jonathan H. Pugh, obtained possession of them from the secretary of the company at my request, and for the purpose of collecting the same; and I directed the trustees to take such proceedings at law as would secure such a result. The time of making the demand for my bonds upon the president was some time early in the summer of 1873, and it was made upon him by myself in person at the office of the Fairmount Gold and Silver Mining Company. I do not know the exact date the trustees obtained possession of my bonds from the company, but I do know it was between the time of my demand for them and the time of the commencement of the proceedings by the trustees to collect my bonds." (256)

In answer to the 4th cross-interrogatory (71), J. H. Pugh testified,

> "None of the notes or evidences of indebtedness were paid by the Fairmount Gold and Silver Mining Company," nor by the trustees; some of the notes secured by the bond and mortgage were exchanged by the holders of the same into stock of the company conditionally, under and by virtue of the legislation of the board of directors of said company, an abstract of which legislation, taken from the minute book of the company, I now make part of my answer, and mark it with my initials, "J. H. P.," for identification. (The commissioner marks it Exhibit "R," C. P. C., U. S. Commissioner. See Record, p. 153.) The notes were not canceled, because they were exchanged or converted conditionally, as more fully appearing in Exhibit "R"; the notes were never reissued, and the notes appear in Exhibit "E," in my answer to 11th direct-interrogatory, are the original notes issued by the company, to parties named therein for money borrowed by the company from said parties; the parties named in the notes or evidences of indebtedness, claim to be and are owners of them under the provisions of the legislation of the company as more fully appears in Exhibit "R," in my answer to this cross-

interrogatory, and demand their rights under the mortgage and request that the trustees pursue and enforce such right; myself and Thomas Hare, trustees, have possession of the notes, as more fully appears in Exhibit "E" in my answer to the 11th direct interrogatory for the purposes of this suit."

See also 83, 84, 93, 102. Cross-interrogatory 5, (72).

"If you say that any of the indebtedness of the Fairmount Gold and Silver Mining Company was taken up and satisfied, either by exchange of the same for the stock of the company or in any other manner, give a full and complete bill of all the debts so paid, either by stock or in any other manner, and a full and complete list of each and every debt of the said company not taken in and paid."

Ans. None of the indebtedness of the Fairmount Gold and Silver Mining Company was taken up and satisfied, either by the company or the trustees. In my answer to the fourth cross-interrogatory I say that some of the notes of the company given to the various parties for borrowed money were exchanged or converted into stock of the company, upon condition that all holders of such notes would exchange or convert the same into stock of the company. All holders did not exchange or convert, and those who did convert claim a release from such exchange or conversion, as the condition of the legislation of the company was not complied with, and have directed the commencement of this suit. I now hand to the commissioner a list of these debts for borrowed money which were exchanged for the stock of the company, and mark it with my intitials, "J. H. P.," for identification (and the commissioner marks it Exhibit "S," C. P. C., U. S. Commissioner), and offered as part of my testimony. I also hand to the commissioner a list of those debts for borrowed money which were not exchanged for stock of the company, and mark it with my initials, "J. H. P.," for identification (the commissioner marked it Exhibit "T," C. P. C., Commissioner), and ask to have it taken as part of my testimony."

This is taken from the books of the company (72). See, also, testimony of Thomas Hare (84), of John Russell (93–94), of J. S. Fish (113–114), and of Alfred Smith (102).

The testimony of Shelmardine, for appellee, defendant below, was that all the certificates were converted except about $3,500. (243.)

Hare, as witness for the defendant, states the proviso that all holders should convert within ten days, and that the unconverted certificates amounted to three or four thousand dollars. (246–247.)

Alfred Smith, a witness for defendant, states that "there was about $11,400 worth of bonds surrendered under the provisions of the resolution," and "twenty-one hundred and forty odd dollars" of bonds not surrendered. (248.) He states that in 1875 the certificates surrendered were demanded from the company by the trustees, and that they were handed over to the trustees and a receipt taken therefor. (248.)

J. H. Pugh, as witness for defendant, testified that

> "These certificates of indebtedness were returned to the company and exchanged for stock of the company conditionally, in accordance with the terms of that resolution." (250.)

He returned his own certificates, with the understanding that he was to have them back whenever he saw fit to demand them. (250.) He was called upon by the bondholders to proceed to collect the mortgage. (251.)

It is not an unfair inference that the object of all who really had the interests of the Mining Company at heart, in proposing the plan embodied in the resolution of February 8, 1873, was to secure, if possible, the conversion of the notes which had passed into the hands of Thackara which were secured by the mortgage. It does not appear that any other creditor was likely to cause trouble. The other notes held by him, not secured by the mortgage, were not to become due and payable until profits should be realized. Such was the understanding of the president and directors (188, 193, 196, 197, 200, 203, 249), and the testimony is uncontradicted.

When, therefore, instead of surrendering his notes, Thackara caused an attachment to be levied upon the entire property of the Mining Company, it is submitted that, even if the resolution had been without condition, and an offer to issue stock in lieu of the notes had been fully accepted and the transaction fully executed, no principle of law or of equity would have prevented a mutual abandonment of the plan. The suit against a company which had never earned any profits must have rendered the stock valueless.

Why should not the Mining Company have returned the bonds? The mortgage creditors had in good faith loaned money upon the faith of the mortgage. Thackara had no equities as against the creditors secured by the mortgage. From and after March, 1871, he had actual knowledge of the bond and mortgage and of the debts which they secured, and knew that they were for borrowed money (66, 78, 90, 98, 109, 124). He was not a party to the proposed conversion. By his act he made it impossible. He certainly bore no relation toward it which could entitle him to insist upon it as a consummated fact.

Of the thirty-eight noteholders secured by the mortgage who exchanged their notes conditionally, it appears that four had not, when the testimony was taken, returned the stock to the company. It is apparent that, from the date of Thackara's suit, the stock was regarded as of no value. Mr. Pugh says (251): "I have not surrendered my stock, but expect to." This doubtless was the understanding with the other three. It does not appear in the record that any other certificates so conditionally delivered were outstanding, and the stock held by the four persons who testified would doubtless have been given up at any time when the company might deem it of value enough to ask for it.

The testimony, which is wholly uncontradicted, proves that the "conversion" was never consummated; that the conditions precedent, as to the time when it was to be affected and the number of note-holders required to co-operate, were never fulfilled; that, pending the proposed conversion, no act of ownership over the stock was exercised by the mortgage creditors; and that, instead of a consummation or ratification of the conversion, there was effected an actual rescission of it by the voluntary act of both parties. The formal redelivery of the notes or bonds secured by the mortgage to the trustees is shown by the testimony of witnesses examined in behalf of the defendants; of Alfred Smith (248, 249), and of J. H. Pugh (250, 251). John Russell, President (208) of the Fairmount Gold and Silver Mining Company, testified (94):

> "The books of the company show that all holders of the notes secured by the mortgage did not convert, and the legislation of the company thereby fell."

Alfred Smith, Secretary of the Company, testified:

> "Such (of the notes secured by mortgage) as were exchanged were not cancelled, because the conditions have not been carried out and have never been complied with." (102.)

W. H. Shelmardine, witness for defendants, testified as follows:

> "I surrendered my bonds upon one condition: that all bondholders were to surrender their bonds within, I think, ten days of the passage of a certain resolution, and further, that all bondholders were to surrender their bonds, and accept stock in lieu of the same. I was a

member of the Board of Directors at this time, and I hold myself—now hold—one bond for over $1,000." (243.)

Instead of evidence on either side tending to show that either the note-holders, the trustees, or the company ever treated or regarded the conversion as completed, the unanimous testimony of every note-holder who testified, of the trustees, of the President of the company, the Secretary, the Treasurer, and all the directors, shows that the attempted "conversion" was fully and completely rescinded.

The conditional delivery of the notes secured by the mortgage, so returned to the trustees, did not take away the right to enforce them by foreclosure.

Heminway vs. *Bassett*, 13 Gray, 380;
Cary vs. *Prentiss*, 7 Mass., 63;
Davis vs. *Maynard*, 9 Mass., 242;
McCormick vs. *Digby*, 8 Blackford, 99;
1 Hilliard on Mortgages, 481, 482;
Bragg vs. *Pierce*, 53 Maine, 65;
Sheddy vs. *Geran*, 113 Mass., 378;
Howe vs. *Lewis*, 14 Pick., 329;
Teed vs. *Caruthers*, 1 T. & Coll., Ch. 31;
Bruce vs. *Nelson*, 35 Iowa, 157;
Storer vs. *Wood*, 26 N. J., Eq., 417.

VI.

The effect of the Proceedings at law.

The notes represented by the trustees not having been paid and taken in, the fact that Thackara reduced his notes secured by the mortgage to judgment could not prevent foreclosure in behalf of the notes not reduced to judgment, and the allegations in the answer with regard to the suit and judgment constitute no defense to the bill.

The levy of an execution by any other creditor or the sale under it does not affect the rights of the mortgagees.

1 Jones on Mortgages, Sec. 665;
Whitworth vs. *Gangain*, 5 Hare, 415;
Langton vs. *Horton*, 1 Hare, 549;
Febeiger vs. *Craighead*, 4 Dallas, 151;
Crow vs. *Tinsley*, 6 Dana, (Ky.,) 402;
Penneck & Hart vs. *Coe.*, 23 Howard, 117.

The court is also respectfully referred to the argument filed in behalf of complainants in the court below, and printed in the record, (pp. 264, 287.)

JOHN W. ROSS,
MILLS DEAN,
Counsel for Appellant.

112-238

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OCT 17 1884
JAMES H. M[illegible]

In the Supreme Court of the United States.

JONATHAN H. PUGH, *Appellant*,
vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY *et al.*
No. 36.

Addenda to Brief in behalf of Appellant.

Counsel for appellant have failed to discover any evidence in the record which sustains the statement contained upon page 3 of the brief filed in behalf of appellee that "these "papers seem to have been numbered consecutively, from "one upward, and to have been disposed of at a discount "of twenty-five per cent." The extract from the minutes quoted (138) authorized an issue of $5,000 in bonds, at the usual discount of twenty-five per cent., but no testimony shows that the holders of the bonds secured by the mortgage paid less than the face value. The defendant's own witness testified (245): "For these certificates of indebtedness or bonds, the persons who took them paid cash there-" for to the full amount to the Treasurer of the Company."

We do not find any evidence in the record that the holders of these certificates were all stockholders and officers of the Company, as is stated on pp. 3, 10 of the brief for appellees.

The statement contained on p. 5 of said brief, "that thir-"teen of the certificates, aggregating $1,991.35, were not "presented for exchange, Rec. 153, 154, 155," is also erroneous. The footing of said certificates on p. 155 is $2,352.35.

On page 9 of said brief a statement is made as follows: "There is no evidence that the money raised on these certifi-"cates was used to complete the works." Nor was any issue made with regard thereto by the pleadings, so as to suggest any proof on that point, on the part of the plaintiff. On page 98 Alfred Smith testifies as follows, in answer to interrogatory 17: "I had several conversations with John W. "Thackara in 1871, before I became a stockholder and di-"rector in said company, with regard to the financial condi-"tion and affairs of the Fairmount Gold and Silver Mining "Company, of which he was the general agent; at which time "he informed me there was a bond and mortgage of seventeen "thousand dollars entered of record against the company in "Clear Creek County, Territory of Colorado, *which was to "secure moneys borrowed from different individuals to complete "the works of the Company in Colorado*," and on page 124 Thomas J. Clinger testifies in answer to interrogatory 17: "In "the spring of 1871, when John W. Thackara returned from "Colorado, he had frequent conversations with our former "president, Charles H. Brown (now deceased), in my pres-"ence, in reference to the bond and mortgage dated Aug. 22, "1870; he was informed that the purposes and object of said "bond and mortgage were to secure parties who had already "loaned the said company money *for its further development*, "and for which notes or bonds had already been issued; the "bond and mortgage was given for the purpose of securing "the parties who had already advanced the money, and who "required other security than the notes already given."

On page 9 of the said brief there is the following statement: "The face value of the certificates outstanding at the time the mortgage was executed was $16,387.05. (Rec. 147.) On these, the Company had received in cash, $12,290."

We find no proof which sustains this statement—the only testimony upon this point was that adduced by the defendants themselves, heretofore alluded to, that the persons who took the certificates paid cash therefor, to the full amount (243.)

In view of the erroneous footings of some of the exhibits containing lists of the debts secured by the mortgage, it is deemed best to explain them, and to give a complete list of them.

The footing on page 39 of the list contained in the amended bill is substantially correct. It contains 93 separate and distinct debts intended to be secured. The sum total is $16,323.05.

Exhibit C, page 137, contains 95 debts, being the same list given in the bill (39), with two others.

Samuel Arbuckle, Aug 5, 1868	$50 00
George Meyers, Mch. 12, 1870	15 00

The item on p. 136:

Jonathan H. Pugh, Mch. 11, 1870........................ $33 33,

Should have been $333.33. (141, 146, 150, 154.)

The footing should have been greater than the one on p. 39 by $65, or $16,388.05.

Exhibit E, (140, 141) is a list of the notes secured by the mortgage, *which were controlled by the trustees*, as will be seen by the answer to Int. 11, (63).

It is identical with the part of Exhibit "P" (150), which foots up $11,525.52, except that the latter omits the debt to Geo. C. Hoeflick, (No. 81), May 21, 1870, $10.00.

The list termed Exhibit L, (145, 146, 147) is intended to be a complete list of the debts secured by the mortgage, and the sum total $16,387.05, is substantially correct.

Exhibit S, (155) containing a list of the debts conditionally exchanged, should have a footing of $14,387.59. But the last item in it is erroneous. No other list contains any such debt to A. C. Brown, nor does it appear in Exhibit H, (144), where the total indebtedness to him is stated.

From the correct footing of............................	$14,387 59
The Brown note deducted.................	375 00
Leaves the total of debts conditionally exchanged.....	$14,012 59

With the view of aiding the court in estimating the debts secured by the mortgage, the following table is submitted of the individual debts shown by all the exhibits to have been secured, placed in the order in which they accrued, as shown by the numbers, so far as the record contains them. When not numbered, they have been placed in the list in the order of their dates.

Debts secured by the mortgage.

No.			
2	A. C. Brown,	Aug. 5, 1868	$250 00
3	Matthew Walker,	“ “ “	50 00
4	J. S. Fish,	“ “ “	100 00
5	S. Nelson,	“ “ “	150 00
6	Thos. Hare,	“ “ “	220 00
	S. Arbuckle,	“ “ “	50 00
8	Wm. Williams,	“ “ “	20 00
9	H. Roop,	“ “ “	80 00
10	J. H. Pugh,	“ “ “	50 00
11	G. Geissert,	“ “ “	100 00
12	P. Miller,	“ 6, “	200 00
14	J. T. Weaser,	“ 7, “	20 00
15	John Bateman,	“ 11, “	25 00
	W. B. Wharton,	“ 13, “	100 00
	Samuel Bowers,	“ 20, “	10 00
18	A. H. Pritchett,	Jan'y 18, 1869	70 00
19	George Myers,	“ 29, “	10 00
21	M. Homiller,	Feb. 3, 1869	10 00
22	J. R. Brownholz,	“ 22, “	50 00
23	P. Miller,	“ “ “	100 00
24	T. F. Scattergood,	“ 23, “	15 00
25	E. S. McGlue,	“ 24, “	20 00
26	C. Van Gunden,	“ 27, “	10 00
27	R. C. Shelmardine,	“ “ “	50 00
28	W. B. Moylan,	“ “ “	20 00
29	G. M. Highley,	“ “ “	20 00
30	W. H. Shelmardine,	Mch. 2, 1869	100 00
31	Thos. Hare,	Aug. 5, 1868	333 34
A. 32	A. C. Brown,	“ “ “	333 32
33	J. S. Fish,	“ “ “	333 33
	Thos. Nelson,	Mch. 26, 1869	100 00

35	W. H. Shelmardine,	“	“	“		250	00
36	J H. Pugh,	“	“	“		250	00
37	Thos. Hare,	“	29,	“		250	00
38	P. Miller,	“	“	“		50	00
39	J. L. Sleeper & Son,	Ap'l	3,	“		15	00
40	A. S. Dunlery,	“	12,	“		15	00
42	Ezra Willetts,	“	17,	“		100	00
43	Swain Thackara,	“	12,	“	(166)	100	00
44	J. P. Harker,	May	17,	“	(166)	20	00
45	M. Walker,	“	31,	“		50	00
46	S. B. Ely,	June	18,	“		80	00
47	J. B. Ely,	“	“	“		70	00
48	A. C. Brown,	July	6,	1869	(167)	183	33
49	J. H. Pugh,	“	9,	“		333	33
50	Thos. Hare,	“	“	“		666	67
51	Mary Ann Vinal,	“	15,	“		100	00
52	M. Walker,	“	24,	“		133	33
53	I. L. Fish,	Aug.	28,	1869		15	00
54	P. Miller,	“	30,	“		200	00
55	J. R. Brownholz,	Sept.	9,	1869		30	00
56	J. H. Pugh,	“	20,	“		133	33
57	Thos. Hare,	“	“	“		333	33
58	A. C. Brown,	Oct.	9,	1869		680	00
59	Thos. Hare,	“	19,	“		66	67
60	J. H. Pugh,	“	“	“		66	67
61	W. H. Shelmardine,	“	“	“		10	00
62	Thos. Hare,	Nov.	16,	1869		1,333	34
63	J. H. Pugh,	Feb.	4,	1870		133	33
64	Thos. Hare,	“	“	“		266	67
65	“ “	“	24,	“		368	00
66	J. S. Fish,	“	“	“		368	40
67	J. R. Brownholz,	Mch.	8,	1870		66	67
69	P. Miller,	“	“	“		450	00
69½	D. T. Clinger,	“	“	“		66	67
70	Thos. Hare,	“	9,	“		266	67
71	J. H. Pugh,	“	11,	“		333	33
72	Scattergood & Dunlery,	“	12,	“		66	67
	George Myers,	“	“	“		15	00
74	R. C. William,	“	15,	“		133	33
75	C. W. Williams,	“	“	“		66	67
76	A. C. Brown,	Mch.	31,	1870	(167)	350	69
77	W. H. Shelmardine,	May	4,	“		1,333	34
78	Samuel Nelson,	“	19,	“		25	00
79	Jabez Lewis,	“	20,	“		266	66
80	James Durnell,	“	21,	“		80	00
81	G. C Hoefflick,	“	“	“		10	00
82	Ezra Pratt,	“	“	“		100	00
83	H. Roop,	“	“	“		66	67
84	M. Walker,	“	23,	“		25	00
85	John Bateman,	“	24,	“		66	67
86	E. Willetts,	“	“	“		25	00
87	R. C. Shelmardine,	June	21,	1870		66	67
95	J. R. Brownholz,	Dec.	2,	“	(111)	66	66
						$13,617	86

Besides the above, other debts were secured for which certificates were not issued (151, 152), to wit:

Matthew Walker,	May	19,	1870	50 00
J. S. Fish,	"	"	"	452 50
Thomas Hare,	"	"	"	555 00
J. H. Pugh,	"	"	"	540 00
Peter Miller,	"	"	"	355 00
J. R. Brownholz,	"	"	"	66 66
R. C. Shelmardine,	"	"	"	25 00
W. H. Shelmardine,	"	"	"	570 12
Ezra Withers,	"	"	"	30 00
R. F. Shannon,	"	"	"	50 00
W. L. Vinal,	"	"	"	75 00
				2,769 28
To this add the debts evidence by certificates				13,617 86
				$16,387 14

Respectfully submitted,

JOHN W. ROSS,
MILLS DEAN,
Counsel for Appellant.

112-238

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 36.

JONATHAN H. PUGH, SURVIVING TRUSTEE, &c.
Appellant,
vs.
THE FAIRMOUNT GOLD & SILVER MINING CO.,
GILBERT B. REED, ET AL.,
Appellees.

BRIEF FOR APPELLEES.

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WASHINGTON:
GIBSON BROTHERS, PRINTERS.
1884.

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vs.
THE FAIRMOUNT GOLD AND SILVER MINING COMPANY, GILBERT B. REED, ET AL.
No. 36.

STATEMENT.

This is a foreclosure suit. It was begun in one of the district courts of Colorado, and on petition of complainants transferred to the United States Circuit Court sitting at Denver. The property described in the mortgage consists of a mill site and certain mines situated in Spanish Bar District, Clear Creek County, Colorado. The bill of complaint was first filed November 26, 1875. Subsequent to that no less than four bills and amended bills were filed on the part of complainants. (Rec., 10, 23, 37, and 296.)

The Court below, after having heard the case on pleadings and proofs, on the 10th day of July, 1880, dismissed the bill. (Rec., 303.) From that decree complainants have appealed to this Court.

The undisputed facts in the case, as the same are gathered from the Record, are about as follows:

The Fairmount Gold and Silver Mining Company was incorporated by special act of the Pennsylvania Legislature, approved May 1, 1866. The act will be found on page 235 of the Record. The Company was authorized to purchase and sell real estate and carry on a general mining business in the Territory of Colorado. It was authorized to elect seven Directors, but no special authority is conferred on this Board. On the 16th day of June, 1868, the Company had acquired the real estate described in the bill, and had commenced erecting "works" thereon. But it was out of funds, and at a meeting of the stockholders on that day the following legislation was enacted:

> " After considerable discussion on the best means of rais-
> " ing funds for the completion of our works in Colorado, it
> " was moved and carried that the Directors be empowered
> " to raise money *for the completion of our works* in Colo-
> " rado, by bond and mortgage, as they may deem best."
> Rec., 137–8.

The Directors, however, did not avail themselves of the authority thus given them by the stockholders. They determined to raise such money as they needed by other means. On the 27th of July, 1868, but little more than a month after the meeting of the stockholders, they provided for issuing a series of so-called *bonds*, which were wholly different from the "bond and mortgage" above provided for. The minutes of the Board show the following entry:

> "July 27th, 1868. On motion, resolved that Wm. H.
> " Shelmerdine and Charles H. Brown be appointed a com-
> " mittee to prepare form of bond, and report.
> " On motion of Jacob S. Fish, the form of bond was read
> " and adopted."
> Rec., 138.

On page 139 of the Record is found a copy of one of these bonds or paper obligations, which is as follows:

“ [Five-cent Internal Revenue stamp.]

“ PHILADELPHIA, *June* 21*st*, 1870.

“ No. 87. [Interest to be paid from May 13th, ’70.]

“ One year after date, or sooner, at the option of the Di-
“ rectors, The Fairmount Gold and Silver Mining Com-
“ pany promise to pay to the order of R. C. Shelmerdine,
“ M. D., sixty-six ($66\frac{67}{100}$) dollars in lawful money of the
“ United States, with six per cent. interest, payable in gold
“ upon the redemption of this bond.

“ [SEAL.] (S’g’d) CHAS. H. BROWN,
“ *President.*

“ (S’g’d) ABRAM C. BROWN,
“ *Treasurer.*

“ Countersigned by the Secretary:
“ (S’g’d) T. J. CLINGER,
“ *Secretary.*”

These papers seem to have been numbered consecutively from *one* upwards, and to have been disposed of at a discount of twenty-five per cent. (See extracts from minutes of meeting of Directors held Feb’y 15, 1870. Rec., 138.) They were taken solely by the stockholders and officers of the Company. Money was borrowed on them in sums ranging from $10 to $1,300.

For more than two years the Directors raised funds for their various purposes in this way.

This written obligation is variously designated by the Directors themselves as a “ bond,” a “ certificate of indebtedness,” and a “ note.”

By July 19, 1870, there was something more than $13,000 of indebtedness evidenced by this kind of paper. At a meeting of the Board of Directors on that day the following was enacted:

“ On motion of J. H. Pugh a committee of two be ap-
“ pointed to prepare and submit a plan by which the bond-
“ holders be made secure for money loaned at different

" times, and take such legal advice as they think necessary,
" and report the same at the next meeting of the Board,
" which was agreed to. President appointed J. H. Pugh
" and Wm. H. Shelmerdine. On motion, the President was
" included on the committee." Rec., 138.

On the 22d of July this committee reported as follows:

" Whereas, at a meeting of the stockholders of the Fair-
" mount Gold and Silver Mining Company, held at Me-
" chanics' Hall, No. 1105 Coates st., on June 16th, 1868,
" it was resolved that the Board of Directors be authorized
" to borrow money for the further improvement and devel-
" opment of our property in Colorado Territory by giving
" bond and mortgage as security for the same, as they deem
" best; and whereas a number of the stockholders have
" been furnishing funds from time to time, taking therefor
" the Company's notes, and a number of those notes being
" due and unpaid, and demand being made for the pay-
" ment of the same or better security given therefor:
" *Resolved*, That the proper officers of the Company be
" authorized and instructed to execute a proper bond and
" mortgage or bonds and mortgages sufficient to cover said
" demand, and affix the corporate seal and proper signatures
" to the same:" which report was adopted, and the committee continued. Rec., pp. 138–9.

On the further report and recommendation of this committee it was determined by the Directors to make a bond and mortgage to two of their number as Trustees, such bond and mortgage " to be executed in favor of persons now " holding certificates of indebtedness." Thomas Hare and Jonathan H. Pugh were elected such Trustees, and subsequently (August 22, 1870) the mortgage in question was executed. (Rec., 139.)

The bond and mortgage will be found on pages 3, 4, 5, and 6 of the Record. No trust is stated or suggested in either paper. They bear date August 22, 1870, and are conditioned absolutely for the payment to Hare and Pugh of the sum of $17,000 at one year from date. The trust is declared in a separate paper, found on pages 151, 152 of the Record.

Two years and a half after the bond and mortgage were made, and one year and a half after they were, by their terms, due and payable, the Board of Directors passed the following resolution:

> " *Resolved*, That the Board of Directors authorize the
> " conversion of certain outstanding and unpaid *certificates of*
> " *indebtedness* of the Fairmount Gold and Silver Mining
> " Company, being numbered from 1 to 87, both numbers
> " inclusive, and No. 89 to 100, both numbers inclusive, into
> " stock of the said Company, at the par value thereof, upon
> " the surrender of the said certificates of indebtedness by
> " the holders thereof: *Provided*, That the holders of the
> " said certificates of indebtedness convert the same into stock
> " of the said Company, at the par value thereof, within ten
> " days from the date of the passage of this resolution, and
> " all the holders convert." (Rec., 153.)

There seems at this time to have been oustanding ninety-five such certificates, aggregating $16,387.05. Eighty-two of these, aggregating $14,395.70, were converted into stock in pursuance of the resolution. Thirteen of the certificates, aggregating $1,991.35, were not presented for exchange. (Rec., 153, 154, and 155.)

At this time the Company was indebted to John W. Thackara, as follows: On unpaid salary, as Superintendent of the Company property, $11,839.50; on account for advances in the purchase of material, &c., $5,579.53; as assignee of claims held by A. C. Brown, J. P. Harker, and Swain Thackara, $2,942.35—the whole aggregating $20,362.38, without interest. (Rec., 144, 145, and 186.)

All the outstanding certificates were either converted into stock or assigned to John W. Thackara, with the exception of two certificates to Samuel Nelson of $25 and $150 each, and one certificate to W. B. Wharton of $100. Defendant Reed, in his answer, (Rec., 49 and 50,) offers to pay whatever amount may thus be due and owing said Nelson and Wharton.

March 22, 1873, said John W. Thackara, in order to collect these various claims, commenced suit against the Company in Colorado by attaching the property now in dispute. (Rec., 157.)

In this suit the Company appeared by Frank A. Pope, Esq., its attorney, entered its plea, and made full defence. (Rec., 173.) Among its witnesses who were sworn and examined on its behalf were Thomas Hare and Jonathan H. Pugh, the appellants in this suit. (Rec., 190, 195.)

Among the defences it was alleged that the salary remaining unpaid to Thackara was only to be paid when the profits from the mines were sufficient to warrant such payment, and that such condition was a part of the contract with Thackara. (Rec., 178.)

The facts of the mortgage, and interest thereunder of the various parties, were also set out in the pleadings. (Rec., 179.)

The cause was tried on the 8th day of December, 1874, before a jury, the Hon. Moses Hallett, judge, presiding. A verdict was rendered for plaintiff for $23,442.12, and the defendant first moved for new trial, afterwards for a stay of judgment, both of which motions were overruled and judgment entered according to the verdict. (Rec., 226, 227, and 228.)

An appeal was then allowed to the Supreme Court of the State, conditioned that bond for security for costs and bill of exceptions be filed within thirty days. The appeal was not perfected. (Rec., 229.)

In due time execution was issued on that judgment and the property sold by the Sheriff. The plaintiff, Jno. W. Thackara, was the purchaser. Before the equity of redemption expired Thackara sold and assigned his right in the premises to Gilbert B. Reed, to whom the Sheriff, upon the expiration of the time of redemption, made the deed. The deed bears date December 15, 1875. (Rec., 233–4.)

The foreclosure suit which is now here on appeal was commenced November 25, 1875, more than four years after the mortgage, by its terms, became due. The land had been sold on the attachment suit, and the time for redemption had nearly expired. The first bill of complaint was lost from the files of the Court, and no further steps taken in the matter until August 30, 1877, when a second bill was filed.

ARGUMENT.

1. The bond and mortgage were unauthorized and void.
2. If the Court should find that the Directors were authorized to make the bond and mortgage for the purposes claimed, the indebtedness intended to be secured thereby has been fully cancelled and paid, with the exception of $275 due Nelson and Wharton, which we offer to pay, and the bill should be dismissed.

I.

The Directors could not mortgage the property of their own motion. If they had any authority it was derived from the action of the stockholders on the 16th of June, 1868. (Railway Co. *vs.* Allerton, 18 Wall, 233.) In fact, no other authority is claimed. But that authority is specific and limited. It is in the following words:

"After considerable discussion on the best means of raising "funds for the completion of our works in Colorado, it was "moved and carried that the Directors be empowered to "raise money for the completion of our works in Colorado "by bond and mortgage, as they may deem best."

It is apparent from the whole Record that at this time the Company was out of debt. It had purchased the mines and mill-site, and partly erected its "works," when it found itself without funds. The stockholders were called together, were made conversant with the situation, and "after considerable discussion" determined to raise money by bond and mortgage *for the completion of their works.* Authority to this end alone was bestowed upon the Directors. They were definitely instructed to do a specific thing in a specific way, and certainly within a reasonable time.

It is a fair presumption that the property at that time was good security for the amount of money desired, and that the money could have been borrowed upon bond and mortgage at ordinary rates of interest. What did the Directors do? Instead of making the loan as authorized, they determined to lend money to the Company from their own pockets at an enormous discount. They prepared the form of obligation provided for by their resolution of July 27, 1868, (Rec., 138,) fixing the interest at "six per cent., "payable in gold," and then invested in this paper, and "placed it" among their friends at a discount of twenty-five per cent. So far as we can learn from the Record, every one of the officers and Directors loaned money to the Company at these ruinous rates, and held some of these "certificates of indebtedness." It was a most convenient and profitable way of investing surplus funds. Quite as convenient as a savings-bank, and much more profitable. Moneys in all sums, from ten dollars upwards, were thus invested at the rate of seventy-five for one hundred, and six per cent. interest in gold on the face value of the paper. There was a premium on gold in 1868. The certificates were payable one year after date, "or sooner, at "the option of the Directors." Without regard to the premium on gold, this would give these thrifty officials a percentage of more than forty-one cents on the dollar.

The Directors continued to raise money in this way for two years—from July 27, 1868, to July 22, 1870. (Rec., 138.) Then finding that the mines were not yielding dividends, and the certificates were due and unpaid, they bethought themselves of the action of the stockholders with reference to the mortgage. They made a bond and mortgage to two of their number, *not for the completion of our works in Colorado*, but "executed in favor of persons now "holding certificates of indebtedness." There is no evidence that the money raised on these certificates was used to complete the "works." The face value of the certificates outstanding at the time the mortgage was executed was $16,387.05. (Rec., 147.) On these the Company had received in cash but $12,290.

Among the questions presented to this Court in Koehler *vs.* Black River Falls Iron Company (2 Black, 715) was one similar to this. There the stockholders had authorized the Directors to effect "a loan of the highest possible amount, "and in case of success to close it, and they are empowered "to encumber for the same the works, with buildings and "appertaining lands." Following this, the Directors executed a note and mortgage for $15,000 in consideration of a loan of $2,000 in money and provisions, and an undertaking on the part of the mortgagees to assume the payment of debts amounting to over $9,000, which the Company owed to individual Directors.

Mr. Justice Davis, speaking for the Court, says: "The "Company was evidently embarrassed and in great need of

" money, and as the necessity was urgent and pressing the " Directors were instructed to obtain as large a loan as they " could, and to secure it by a mortgage on the lands and " works. The stockholders clearly contemplated a loan of " money to carry on their business; and if a loan could " not be effected without real security, power to mortgage " was given to the Directors. *No authority was given to* " *them to secure pre-existing indebtedness, and certainly* " *none to secure themselves in preference to other creditors.*"

Again the Court remarks: " Directors cannot thus deal " with the important interests entrusted to their management. They hold a place of trust, and by accepting the " trust are obliged to execute it with fidelity, not for their " own benefit, but for the common benefit of the stockholders of the corporation."

The mortgage was unauthorized, and the proposed beneficiaries have no equitable claim to have it sustained. They were officers, and other stockholders, and chargeable with knowledge of its want of legality.

We conclude therefore that the mortgage was void—first, because the Directors had no authority to make it, and, second, because it was made to secure a fraudulent debt contracted by the officers of the Company.

Field on Corporations, secs. 146, 154, 174.

Morawetz Private Corporations, secs. 239, 243, and 244, and authorities cited by both authors.

II.

If it be admitted, *pro argumento*, that the Directors might properly create the trust and encumber the real property of the Company to secure existing debts, it must still be contended that the debts thus secured have been paid, and the bill should be dismissed.

For present purposes all certificates covered by the mortgage can be divided as follows:

1st. Those paid and cancelled by the holders exchanging them for stock of the Company in pursuance of the resolution of the Directors of February 8, 1873.

2d. Those embraced in the attachment suit of J. W. Thackara, and satisfied by the judicial sale of the property.

3d. One certificate for $150, payable to Samuel Wilson; another for $25 payable to same party, and one for $100, payable to William B. Wharton, all of which defendant Reed in his answer offers to pay.

On this division of the case the brief of Judge Reed, used in the Court below, is so complete that we adopt it entire.

I will now call the attention of the Court to the following propositions fully established by the evidence and uncontradicted:

First. That the money advanced for which certificates were issued was advanced by stockholders and officers of the Company, who were familiar with all the details of affairs. (See testimony of Hare and Pugh and minutes of corporate meeting, Ex. "D," pl'ff's test.)

Second. That the parties voluntarily surrendered the certificates to the Company, and took the stock of the Company in lieu of them. (See def't's test., deps. Shelmerdine, Clinger, Fish, and Hare.)

Third. That the holders of certificates, who converted them into stock, surrendered the certificates to the Company and took the stock, still retain the stock, have never attempted to rescind, and have never had possession of the certificates since the surrender and conversion.

In the deposition of Alfred Smith, taken on part of defendants, he says:

"The object of the passage of the resolution was to liqui-
" date a mortgage debt of $17,000, secured by bond and
" mortgage dated Aug. 22, 1870. There was about $11,-
" 400 worth of bonds surrendered.

" The holders of the bonds not surrendered were: "Abram
" C. Brown, about $1,800; Samuel Nelson, about $175; W.
" B. Wharton, about $100, and others, making a total of
" about 2,140-odd dollars. The balance of the $17,000
" indebtedness, for which the mortgage was created,
" amounted to about $3,200, *and no certificates were issued*
" *to the parties for that indebtedness.*"

The $1,800 of A. C. Brown was assigned to Thackara, and was embraced in his suit. The "others," of which the witness speaks as making the 2,140-odd dollars, were those of J. W. and S. Thackara, embraced in same suit, so that all the certificates not surrendered to the Company, or embraced in Thackara's suit, were those of Nelson, about $175, and Wharton, about $100, and agrees with the answer of defendant.

The witness also says: " I have been a Director ever
" since September, 1871, and have been Secretary since
" June, 1872. The certificates of indebtedness, or bonds,
" that were surrendered under this resolution, came into my
" possession, as Secretary of the Company, and they re-
" mained in my possession until they were demanded from
" the Company by the Trustees, some time during the year
" 1875. They were handed over to the Trustees, and a re-
" ceipt taken therefor. I have not the receipt with me.
" *By direction of the President of the Company they were*
" *handed over to the Trustees. The President directed me to*
" *hand them over to the Trustees, at their request, on his own*
" *responsibility, without any order of the Board of Direc-*
" *tors or of the stockholders. I have no recollection of any*
" *bondholder who exchanged his bonds for the stock of the*

" *Company, under the resolution, ever demanding of me a*
" *return of his bonds, and tendering his stock he had re-*
" *ceived in lieu of the bonds.* When I say to me, I mean
" in my official capacity as Secretary of the Company. *So*
" *far as I know, I have no recollection of any such demand*
" *being made upon the Company.* The last I knew of these
" bonds they were in the possession of the Trustees."

Thomas Hare, Trustee, says: " I turned these bonds over
" to the Company, and they are now technically in their
" possession, but in fact in possession of our Attorney in
" Colorado."

Fourth. The same testimony establishes the proposition also that the delivery of the certificates to the Trustees was the unauthorized act of the President of the defendant, the Fairmount Company, after they had been taken in and held by the Company nearly three years.

The parties to whom the certificates were issued, being stockholders and officers, were, by reason of such relation, charged with knowledge of the irregularity of the bond and mortgage; otherwise, as creditors of the corporation, they occupied the same position as any other individual. I do not question the right of the stockholders or officers to deal with the corporation, and admit that the relation of debtor and creditor can legally exist between them; but that relation is one separate and distinct from the official position. Each person has individual transactions as a stranger, and the contract of funding was an individual contract of each holder of certificates with the Company, and when certificates were surrendered and stock taken that was an executed contract in each instance not voidable by the Company, but, if at all, at the option of the individual; and if voidable by the Company, only as in other contracts, by a calling in of the stock and redelivery of the certificates.

Here was no recision of the contract of conversion by the parties that converted their certificates; they retained the stock and never received their certificates back. It cannot be pretended that the President of the corporation was, by virtue of his office, the agent of the individuals for that purpose, because the act of recision in each case must have been an individual act of the person as creditor, not of the person as stockholder. Now, the fact fully appears throughout the testimony, that the Fairmount Company, though nominally a defendant, is really a plaintiff through its own officers, and that, after the sale of the property under execution and the expiration of the time of redemption, the Company, through its President, resurrected the securities that had been dead nearly three years, and delivered them to the Trustees for the purpose of defeating the title and the collection of debts of other creditors.

The brief of plaintiffs' counsel is to great length devoted to what he calls *constructive* fraud, while his whole case teems with actual fraud of the Trustees as officers of the Company, and collusion between them and the President of the Company to put again in being securities that should have been cancelled; if not cancelled, returned, and the stock cancelled, if the other parties had consented. Even if the stockholders who converted their securities had desired and declared their intention to rescind, they could not have done it at that time for obvious reasons.

First. The time of conversion was, for all, ten days. Nearly three years elapsed after the conversion.

> " Whichever party has the right to rescind must do it
> " within the time specified, if there be such a time; other-
> " wise, within a reasonable time."
>
> 2 Pars. Con., 677, and cases cited.

Second. There can be no recision unless the parties are placed in *statu quo*.

Third. A contract can only be rescinded by all parties to it. In this case, with the exception of the Trustees themselves, if I recollect correctly, or perhaps one other individual, there is no evidence that the individuals consented, advised, or even had knowledge of the affair.

So far I have proceeded upon the law as it would stand were the parties ordinary dealers and contractors with each other. But such is not the case. The parties who exchanged their certificates for stock, by that exchange became the debtors of others having claims against the corporation.

The capital stock of a corporation is a trust fund for the payment of debts of a corporation. The creditors of a corporation have the first claims upon it, and the stockholders have no right until all the other creditors are satisfied. These are general principles of law, applicable to all stock corporations, and exist independently of legislative act or intention, and are applicable to the corporation defendant in this suit and the members attempting to foreclose.

Ang. and Ames on Corp., sec. 600, and cases cited.
2d Story Eq. Jur., sec. 1252.
Wood *vs.* Dummer, 3 Mason, 308–311.
Dudley *vs.* Price's Admr., 10 B. Mon., 84–86.

The relation of the stockholders in a corporation to its creditors, whether before or after dissolution, especially if the corporation be insolvent, as the corporation in this case is shown to be, is the same as the corporation itself. The stockholders stand in the relation of *debtors* to such creditors. They clearly stand in this relation as to all the stock owned by them in such corporation. Whether they are to be regarded as individual debtors or not, their stock is pledged for the payment of the debts of the corporation, and to that extent both they and their stock are debtors to such creditors.

> " The corporation itself is bound, during its existence, to
> " administer its funds for the benefit of its creditors and
> " stockholders, and all others interested in its pecuniary
> " affairs, and at its dissolution creditors are preferred to
> " stockholders, on account of the peculiar trust in their
> " favor, and because the latter *as constituted members of the*
> " *corporate body are regarded as sustaining*, in that respect,
> " *the same relation* to the former *as that sustained by the*
> " *corporation* ; and in equity, the property of the corpora-
> " tion is regarded as held in transfer for the payment of
> " the debts, and also that the stockholders are not entitled
> " *to any part of the capital stock* or dividends of the profits
> " until all the debts are paid."
>
> 1st Potter's Law of Corp., sec. 308.

Now, this being the general principle, the law of corporations, I ask, how can parties who have voluntarily, as to themselves and their property, assumed the position of debtors for three years, at their own option, change their personal status and that of their property, and from being debtors become creditors, for the purpose of defrauding others, *bona fide* creditors of such corporation ?

And if parties cannot do it themselves, how can the corporation, or its President, without the knowledge or consent of the individuals, assume for them a position they do not claim for the same purpose, and for the purpose of collecting claims they may personally have ?

In the depositions taken, and in the briefs, considerable stress appears to be laid upon the supposed fact that the claims of Thackara, the notes of the Company, were only payable when the mines yielded profits. I propose to spend no time upon this proposition. In the case below (the attachment case) the same claim was relied upon as a defence. The depositions were taken, etc., and that question, being *res adjudicata*, cannot again be contested.

Considerable time and labor seems to have been expended in the brief of plaintiffs to show that the conversion of the certificates into stock was not a payment. I have already attempted to show that the relations of the parties were changed; that the parties who were creditors voluntarily became the debtors, and that the case differed materially from that of individuals not bearing the same relation to the corporation and its property and indebtedness. But even when the relation is only that that exists between ordinary debtors and creditors, the law is not as is assumed by the learned counsel.

See 2 Par. Con., 681, 685.
Babcock *vs.* Hawkins, 23 Vt., 561—

Where Redfield, J., says:

"We think it must be regarded as fully settled that an
" agreement upon sufficient consideration, fully executed,
" so as to have operated in the minds of the parties as a
" full satisfaction and settlement of a pre-existing contract
" or account between the parties, is to be regarded as a
" valid settlement, whether the new contract be ever paid
" or not, and that the party is bound to sue upon the new
" contract, if such were the agreement of parties. This is
" certainly the common understanding of the matter. It is
" reasonable, and we think it is in accordance with the strict-
" est principles of technical law. * * * All that is re-
" quisite is that the debtor should have executed the new
" contract at that point whence it was to operate as a satis-
" faction of the pre-existing liability in the present tense."

See also—
Sard *vs.* Rhodes, 1 M. and W., 153.
Good *vs.* Cheesman, 2 B. and Ad., 328.
Evans *vs.* Powes, 1 Exch., 601.

In this case they were executed contracts; the creditors agreed to deliver the evidences of indebtedness for shares